DRAFT CONCESSIONAIRE AGREEMENT

“Appointment of concessionaire on Design Build Finance Operate and Transfer (DBFOT) with 100% concessionaire investment for the collection, Primary transportation, secondary transportation to Existing processing plants of 1750 TPD”

Deputy General Manager

BSWML

Miller Tank Bund Road,

Vasanth Nagar, Bangalore

TABLEOFCONTENTS

CONCESSIONAGREEMENT 4
ARTICLE1:DEFINITIONSANDINTERPRETATION 6
ARTICLE2:SCOPEOFWORK 11
ARTICLE3:THE CONCESSION 21
ARTICLE4:CONDITIONSPRECEDENT 24
ARTICLE5:OBLIGATIONSOFTHECONCESSIONAIRE 31
ARTICLE6:OBLIGATIONSOFBSWML 39
ARTICLE7:REPRESENTATIONS,WARRANTIESANDUNDERTAKINGS 41
ARTICLE 8:DISCLAIMER 45
ARTICLE9:PERFORMANCESECURITIESANDMOBILIZATIONADVANCEGUARANTEES……..... 46
ARTICLE10:THE SITES 52
ARTICLE11:UTILITIESANDASSOCIATEDROADS and Trees 57
ARTICLE12:FINANCIALCLOSUREANDSUBSTITUTIONAGREEMENT 58
ARTICLE13:PROJECTENGINEER/PROJECTMANAGEMENTUNIT 61
ARTICLE14:CONSTRUCTIONPERIOD 65
ARTICLE15:COLLECTION, TRANSPORTATION & PROCESSING PERIOD 86
ARTICLE16:MONITORINGANDINSPECTION 96
ARTICLE17:PAYMENTS 100
ARTICLE18:KEYPERFORMANCEINDICATORS 112
ARTICLE19:ESCROWACCOUNT 123
ARTICLE20:FORCEMAJEURE 125
ARTICLE21:SUSPENSIONOFCONCESSIONAIRE‟SRIGHTS 132
ARTICLE22:CHANGEINLAW 137
ARTICLE23:EVENTSOFDEFAULTANDTERMINATION 141
ARTICLE24:TERMINATIONCOMPENSATION 152
ARTICLE25:SUBSTITUTIONOFTHECONCESSIONAIRE 159
ARTICLE26:DISPUTERESOLUTION 160
ARTICLE27:INSURANCE 163

ARTICLE28:VARIATION 165
ARTICLE29:INTELLECTUALPROPERTYANDCONFIDENTIALITY 166
ARTICLE30:ACCOUNTSANDAUDIT 168
ARTICLE31:MISCELLANEOUS 169
ARTICLE 32: DEFINITIONS 174

SCHEDULE1:SCOPE OFSERVICES 191
SCHEDULE2:APPLICABLE PERMITS 194
SCHEDULE3:SPECIFICATIONSANDSTANDARDS 195
SCHEDULE4:MAINTENANCE REQUIREMENTS 196
SCHEDULE5:SAFETYREQUIREMENTS 199
SCHEDULE6:PERFORMANCE SCEURTYORBANKGUARANTEE 203
SCHEDULE7:FORMATOFTHEMOBILIZATIONADVANCEGUARANTEE 207
SCHEDULE8:THE SITES 212
SCHEDULE9:SUBSTITUTIONAGREEMENT 213
SCHEDULE10:SCOPE OFWORKOFPROJECT ENGINEER 224
SCHEDULE11:DRAWINGS 226
SCHEDULE12:CONSTRUCTIONCOMPLETIONSCHEDULE 227
SCHEDULE13:ENVIRONMENT,HEALTH&SAFETY 228
SCHEDULE14:TESTS 237
SCHEDULE15:FORMATFOR [MILESTONE]COMPLETIONCERTIFICATE 239
SCHEDULE16:FORMATFORDAILYWEIGHTSHEET 240
SCHEDULE17:ESCROWAGREEMENT 241
SCHEDULE18:TERMINATIONCOMPENSATION 253
SCHEDULE19:CRITERIA
FORPREPARINGTHELISTOFCHARTEREDACCOUNTANTFIRMS
..... 254

CONCESSION AGREEMENT

This **CONCESSION AGREEMENT (Agreement)** is entered into on this {the…day of .... 2023}at Bangalore

BETWEEN

1. The **Bruhat Bengaluru Mahanagara Palike (BBMP), Karnataka** represented by (*) and having its office at (*) (herein after referred to as the "**State Government**" which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its administrators, successors and assigns);

AND

2. The **BSWML** represented and having its offices at NO. 30/1, 1st and 2nd Floor, UNI Buildings, Thimmaiah Road, Vasanth Nagar, Bengaluru –560 002 (herein after referred to as the "**BSWML**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

AND

3. {*** Limited}, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office(s) at (*), (herein after referred to as the "**Concessionaire**" which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes)of the other part.

Collectively referred to as "Parties", and individually as "Party".

WHEREAS:

(A) Government of Karnataka, through the BSWML, has initiated the proposal to handle the C&D Waste disposal mechanism within metropolitan BMA limits.

(B) The BSWML is engaged in the development of integrated C&D waste management projects and Construction and Demolition Waste in accordance with the C&D WM rules 2016.

(C) The jurisdiction of the C&D Waste Management proposal shall be within Bengaluru Metropolitan (BMA) Limits and the final jurisdiction shall be issued to the concessionaire after signing of the agreement which shall be collectively decided for development and operation of C&D waste management system to be transported to the proposed C&D waste processing plants at identified locations by BSWML within BMA limits at 5 locations with 5n00 TPD at 4 locations and 1000 TPD at 1 location

(D) BSWML is desirous of implementing such development and operation of integrated C&D waste management system and C&D waste (the "**Project**") by seeking private sector participation on Public Private Partnership ("**PPP**") mode by inviting Proposals for the Project within the [jurisdiction of BSWML/collective jurisdictions of PLBs] (the **"Project Area"**); which will inter alia include setting up and operation of the Project in accordance with the terms and conditions to be set forth in the Agreement.

(E) BSWML had accordingly invited proposals under its {Request for Proposals/ Request for Qualifications} No._____] dated [•] (the "**Request for Proposals/Request for Qualification**" or "**RFP/RFQ**") for short-listing of bidders for undertaking the development, Collection, Transportation & Processing of the Project on Collection, Transportation and Processing basis and had shortlisted certain bidders including inter alia, the {the selected bidder/consortium comprising Capital Investment and Collection, Transportation and Processing cost (collectively, the "**Consortium**") with PLBs as its lead member (the "**Lead Member**").

(F) After evaluation of the bids received, BSWML had accepted the bid of the {selected bidder/ Consortium} (the "**Selected Bidder**") and issued its Letter of Award (herein after called the "**LOA**") No. …….. dated ……. to the Selected Bidder requiring, *inter alia*, the execution of this Agreement within 30 (thirty) days of the date of issue thereof.

(G) {The Selected Bidder has since promoted and incorporated the Concessionaire ("**Special Purpose Vehicle**" or "**SPV**") as a company under the Companies Act, 2013, and has requested BSWML to accept the Concessionaire as the entity which shall undertake and perform the obligations under the Concession Agreement for implementing the Project.}

(H) BSWML has {agreed to the said request of the Selected Bidder} and the Parties have accordingly agreed to enter into this Agreement with the Concessionaire for Collection, Transportation and Processing of 1750 TPD C&D Waste on Collection, Transportation and Processing basis, subject to and on the terms and conditions set forth herein after.

(I) The concessionaire is agreed to invest for the 100% of the capital cost towards procuring the BS-VI vehicles as indicated in RFP

(J) The concessionaire agreed to invest 100% towards the O&M cost of the proposal throughout concessionaire period mentioned in RFP

(K) BSWML agreed to release the government notice to pay the tipping fee by the C&D waste generators as per the RFP clause.

(L) Concessionaire agreed to execute the scope of the work mentioned in RFP and BSWML agreed to discharge its responsibilities mentioned in the RFP

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 32) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules. The words and expressions used but not defined in this Agreement and defined in the Environment Protection Act, 1986 (the **"EPA"**), Solid Waste Management Rules, 2016 (the **"SWM Rules"**),the Construction and Demolition Waste Management Rules, 2016 (the **"C&D Rules"**), and Guidelines for Disposal of C&D Waste, 2019 (the **"C&D Waste Guidelines"**), shall have the respective meanings as are assigned to them, respectively, in the EPA, the SWM Rules, the C&D Rules, and the C&D Waste Guidelines.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

(a) the words, phrases and expressions defined herein above in this Article 1 or Article 32 or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said Article or in this Agreement and shall be interpreted accordingly. Expressions which have not been defined in this Agreement shall carry the respective meanings assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case maybe;

(b) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(c) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to

time may be amended, modified, supplemented, extended or re-enacted;

(d) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns; the table of contents, headings or subheadings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;

(f) Any reference to **"Bid Project Cost"** is an approved tipping fee per TPD multiplied with the total Tons of C&D collected, transported & processed under the contract for the duration of one month.

(g) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;

(h) references to **"development"** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "develop" shall be construed accordingly;

(i) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(j) any reference to "**hour**" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;

(k) any reference to day shall mean a reference to a calendar day;

(l) reference to a "**business day**" shall be construed as reference to a day (other than a Sunday and public holiday) on which banks in Karnataka are generally open for business;

(m) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(n) any reference to "**quarter**" shall mean a reference to the period of 3 (three) months commencing from April 1, July 1, October 1, and January 1, as the case may be;

(o) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

(p) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(q) the words importing singular shall include plural and vice versa;

(r) references to any gender shall include the other and the neutral gender;

(s) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);

(t) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

(u) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

(v) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be

construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub- clause (u) shall not operate so as to increase liabilities or obligations of BSWML hereunder or pursuant hereto in any manner whatsoever;

(w) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party in this behalf and not otherwise;

(x) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(y) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

(z) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and

(aa) time shall be of the essence in the performance of the Parties" respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to BSWML shall be provided free of cost and in three copies, and if BSWML is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.2.5 The Parties acknowledge that damages for specific defaults prescribed under this Agreement (including the Delay Liquidated Damages, the Performance Liquidated Damages, the Availability Liquidated Damages, and the Power Consumption Liquidated Damages) are a genuine pre-estimate of and reasonable compensation for the loss and damage that shall be suffered by the non-defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Agreement, and are not in the nature of a penalty.

1.2.6 Subject to the provisions of this Agreement, the Concessionaire shall be responsible to and indemnify, the State Government and BSWML for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and the State Government and BSWML shall be responsible to and indemnify the Concessionaire for the acts and omissions of State Government Related Parties and BSWML Related Parties, respectively, as if they were the acts and omissions of the State Government and BSWML, as the case may be.

1.2.7 Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the State Government and BSWML, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places as required.

1.4 Priority of agreements, clauses and schedules

(a) This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order: this Agreement; and

(b) all other agreements and documents forming part hereof or referred to herein, i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) .

1.4.1 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail;

(d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

(f) between any value written in numerals and that in words, the latter shall prevail

ARTICLE 2

SCOPE OF WORK

2.1. Scope of Work

Scope of work of the Agreement (the "**Scope of Work**") shall mean and include, during the Concession Period:

Design, Build, Finance, Operate, and Transfer (DBBFOT) of facilities and infrastructure at BMA limits.

Scope of work for Collection and Transportation of 1750TPD C&D Waste:

A. C&D waste is divided into two categories:

a. Claimed C&D waste: This is generated by identified generators.

b. Unclaimed C&D waste: where the generator of C&D waste is difficult to be identified, for instance the C & D waste which is mainly found dumped across road sides or in other residential, non- residential and open areas within the BSWML limits.

1. It shall be proposed that a comprehensive plan shall be prepared in consultation with agency who is going to be appointed by the BSWML should prepare comprehensive C&D Waste Management Plan, covering storage, collection and transportation to up to the existing plants and further and disposal.
2. The C/P shall indicate for the collection, storage, containment, transportation of all claimed & unclaimed C&D waste to the facility for its further processing and disposal.
3. The contractor will be responsible for lifting unclaimed waste from areas, as directed by BSWML officials, which otherwise cause nuisance to vehicular traffic, mainly on both sides of the roads and at junction points. The heaps of C&D waste dumped by road side/isolated, is to be cleared by the contractor.
4. Set a common call centre facility in consultation with the Contractor selected for other slice andGPS based, Android & iOS based interactive Mobile Application for easy access of C&D waste facility for the user (8 am to 8 pm, all 365 days) for registering a request for collection from BSWML and private parties. Contractor should attend all the sites within 48 hours.
5. The responsibility of contractor includes providing adequate number and types of vehicles for collection and transportation. These vehicles shall be in compliance with

RTO rules/ regulations and all other applicable rules & regulations/ notifications by competentBSWML.

6. Install GPS in all vehicles at its own cost and provide MIS data to BSWML on a monthly basis and whenever required by BSWML intermittently.
7. Provide all the MIS Data of the project to BSWML along with monthly bill asapproved by BSWML at the time of execution of project.
8. For less than 1 MT of C&D Waste generator i.e. Small Generator, Contractor has to provide door to door service for collection and transportation of less than 1 MT C&D Waste after confirmation of payment receipt paid to BSWML.
9. For generators of C&D waste equal or more than 1 MT & less than 20 MT i.e. Medium Generators, Concessionaire shall provide door-to-door collection facility. Such generators have to book their request, make payment & store C&D waste within their premises ready for lifting.
10. For BSWML's other civil works / bulk generators having quantity equal or more than 20 MT per day or 300 MT per project per month there will be two cases.

a. In case the bulk generator uses BSWML's Collection and Transportation services then the Contractor for this project will make arrangement for Collection, Transportation, and Processing& Disposal of C&D waste from bulk generators. Bulk generator will make payment to contractor directly as per the rates approved by BSWML.

b. In case the bulk generator transports the waste directly to the processing plants site on his own cost then the Bulk generator shall seek prior approvals for the accepted transport mechanism being accepted by BSWML the bulk generator has to pay the fee towards the processing fee to the processing plant agency as per the rates approved by BSWML.

c. If there is a difference between the invoice generated by the waste generator and actual C&D Waste found on the site, Contractor shall inform BSWML and only collect waste corresponding to invoice quantity, in case the generator shows subsequent confirmation for remaining quantity then the contractor shall collect the C&D Waste. All payments shall be linked to the online portal atleast weekly basis.

11. For unclaimed debris in any ward, the contractor in the presence of BSWML's staff will take minimum Two (2) Geo-Tagged photographs of the C&D Waste Pile from different angles, which will mention its date, time and location before and after collecting the waste. Two (2) Geo-Tagged photographs each, before and after collecting the C&D Waste, shall be uploaded on the mobile application/ system and shall be submitted along

with the monthly bill. Payment of unclaimed debris shall be made by BSWML as per the record. Contractor has to install Load Cells/ On-board weighing mechanism on all the vehicles deployed for the project. Specific weight at every spot of claimed and unclaimed C & D Waste shall be recorded, and contractor shall make the needful arrangement.

12. Facility for "on-demand/ on-call pickup" of C&D from claimed C&D waste generators needs to be created by the contractor. The contractor has to lift unclaimed waste and bulk generators can deliver C & D waste at the processing plant after specific approval from BSWML in cases when 600 TPD cannot be met through Debris On-call and unclaimed debris for respective slice.
13. The Contractor has to market and promote its services for lifting of claimed C&D waste.
14. Methodology of Collection & TransportationC & D waste which should include collection from zone, ward, complain based collection, request based collection system utilising the vehicles as mentioned.
15. Proper transportation permits should be obtained and the agency shall have the necessary permits.
16. The Bidder has to dispose the inerts at the suitable location and appropriate manner as per the methodology and rules of the receiving area and with approvals from competentBSWML.
17. The bidder has to provide Uniforms, florescent Jacket and other Safety Gear as per C&D Waste Management Rules 2016 to its operating staff.
18. The Bidder has to provide adequate number of Supervisory staff with conveyance for mobility and communication tools for effective co-ordination of the system.
19. The Bidder has to specifically procure the assets for the C&D waste purpose and all the assets would be painted with specific color code and number and name written on it as per direction from BSWML officials. After the compliance only the vehicles would be allowed to operate.
20. The operation involves various movements of vehicles for maintenance, transportation of vehicles from collection point to Plant site, processing of the C&D Waste and produce recycled materials, movement of vehicles from plant site to disposal site.
21. The successful bidder has to provide registration number of their vehicles to BSWML prior to start of the operation. BSWML may direct the Contractor to get audited any of

the software/ GPS system/ VTMS system used for the project from the authorized agencies acceptable to BSWML at any time during the contract period.

22. The successful bidder has to establish control room, workshop on the processing plant site itself.
23. The contractor shall undertake a mass awareness program, in their respective slice, so as to ensure that C&D waste being generated in its contract area is not being littered along the road side or disposed-off at existing MSW dump site(s).
24. The contractor shall carry out awareness, capacity building and IEC activities.
25. The contractor shall create a sustained system of information, education and communication on construction and demolition waste through collaborations with expert institutions and civil societies and also disseminate through their own website.
26. The contractor should keep a track of the generation of construction and demolition waste within the BSWML limits and establish a database and update on a regular basis in-order to optimize its processing facility.
27. The contractor shall coordinate with the BSWML periodically to understand the C & D waste generation.
28. The contractor will involve community participation and discuss with the citizen community in order to ensure a free flow of information on waste generated by individuals so as to optimize the collection, transportation, Processing and Management Facility.
29. The successful bidder shall compulsorily install Vehicle Tracking Management System (VTMS) on each vehicle used for Collection & Transportationof C&D waste and disposal of post processing rejects, with the necessary web based software, accessible from web, personal computer/ laptops, network links, antivirus, printer, GPS / Sim Card / Dongle and shall provide necessary training to the Municipal Staff and connect the system with Municipal server through IT department of BSWML with loading / unloading switch for vehicles transporting C&D waste/ post-processing rejects at their own cost. Please note that for payment of tipping fee, VTMS record is mandatory.
30. The successful bidder to provide Vehicle Tracking Management System (VTMS) including complete client site connectivity at different locations, Weighbridge etc. The system must be web based application including GPS based live tracking with GIS mapping and integrated map. The successful bidder must provide all necessary hardware (e.g. Computers, GPS etc.) and necessary connectivity with BSWML server. The

successful bidder to comply server requirements of BSWML.

31. The successful bidder shall have to provide separate set of vehicles with VTMS installed and connected to BSWML Server for this project.
32. GPS System shall be installed / fixed / provided in each vehicle deployed under this project for Collection & Transportationof C&D waste and shall be in working conditions always. Feed from these GPS will be integrated with BSWML websites.
33. The successful bidder shall provide the real time feed / monitoring of GPS System through Web based Technology and integrated to BSWML portal.
34. The successful bidder shall collect transport and dispose the waste generated as per the proposal. If it is less or more than indicated in contract hence such case the consigner shall be dealt to account the same as per the accepter rate per tonne.
35. Before commencement of services under this project, the contractor shall submit detail work plan for collection, transportation, processing & disposal of C & D waste and get it approved from BSWML. This plan may be amended in future as per the project requirement; however such amendment will require prior approval of BSWML.
36. Collection of municipal solid Waste and Bio-medical Waste is not within the purview of this Project and it is supposed to be handled as per SWM Rules 2016 and Biomedical Waste – Management & Handling Rules 2016. The Successful Bidder is therefore under no obligation to collect, transport, treat, or dispose of Municipal solid Waste and Bio-medical waste. However, in the event of finding Municipal solid Waste and or Bio-medical waste disposed off unscientifically alongside C&D Waste or mixed with C&D Waste, in the wards covered in Complete Sanitation or Partial Sanitation, the Contractor shall notify the same to BSWML. The Contractor shall not take such waste to the C&D Waste Processing Facility as it may contaminate other product derived from the Waste.
    Mobilization period: 1.0 month from the date of issue of work order or from the date of handing over of the site whichever is later

36.1 The contractor shall complete all the activities such as obtaining all clearances required for the project including clearances required for land development, mobilization / procurement of necessary equipments, vehicles, machineries & resources required for Collection, Transportation of Construction and Demolition (C&D) Waste from BSWML area and commission the contractual work within 03 months of issuance of LOA.

37. Service level benchmarking:

37.1 The Contractor shall achieve Collection, Transportation from Commercial Operation Date in the following manner.

Sl..No.	Period	Benchmark
1	By Six Months from Commercial operation Date	75%
2	By Twelve Months from commercial and operations date	100%

37.2 The operational house of Collection & Transportationis in two shifts

5.00AM to 9.00AM 7.00PM to 11.00PM	7500Kg GVW (for primary collection & transportation)
5.00AM to 9.00AM 10.00PM to 2.00AM	28000 Kg GVW (secondary transportation)

a. Transportation Mechanism:
   i. 5Km for primary collection and transportation with 7500 Kg GVW.
   ii. Secondary transportation: 25Km with 28000 kg GVW vehicles.
   iii. Assessment of vehicles required for primary transportation with 7500Kg GVW (including breakdown + maintenance required of 10%)
   iv. Assessment of vehicles required for secondary transportation with 28000Kg GVW (including breakdown + maintenance required of 10%)

38. Machinery & manpower:

38.1 Depending on the requirement, the successful bidder shall deploy adequate resources in each ward and ensure that 100% C&D waste is collected as required under this project and no C&D waste is left unattended & lying on roadside or any other open space.

38.2 Mechanized lifting & collection of C&D waste shall be done to the extent possible so that there shall minimum physical handling of C&D waste (ideally zero). For mechanized lifting auto tippers/hook lifts/dumper placers or suitable mechanism can be used.

38.3 Minimum capacity of Hook Loaders/Tippers/Trucks shall be of 7500 kg GVW for primary collection and 28000 Kg GVW shall be for secondary transportation.

39. Print media:

The entire concept of proper handling and disposal of C&D waste, including information about the designated C&D waste collection points and the uses of recycled C&D waste materials, toll free helpline number for on-demand lifting of C&D waste should be conveyed through posters, brochures, pamphlets given to each house or commercial establishment and can be displayed in prominent positions as well as local newspapers in consultation with BSWML.

40. Electronic media:

Local cable television channels, radio, websites shall be used by Contractor to inform citizens about the toll-free helpline numbers facilitating on-demand C&D waste collection, new C&D waste collection arrangements and advertise contact numbers of officials to call for problem solving or for reporting grievances relating to unauthorized dumping and non-removal of C&D waste.

41. Schedule of Penalties:

Penalty for Collection & Transportation of C&D Waste

1.	Penalty for Non-reporting of vehicle after 4 hours of breakdown of vehicle before starting of work &failure of bidder to make alternate arrangements.	Rs.500/-per hour per vehicle starting after 4 hours of breakdown.
2.	Penalty for breakdown after starting the work & Failure of bidder to make alternate arrangement within 3 hours for transferring the debris from the breakdown vehicle, the Corporation requires making necessary arrangement.	Rs.500/-per per hour per vehicle starting after 3 hours of breakdown.
3	Penalty for failure to attend any site and collect the complete C&D Waste thereat within 48 hours.	Rs.1000/-per spot

4	Penalty for failure to attend any site and collect the complete C&D Waste thereat within 72 Hours	Rs. 2000/- per spot per day
5	Penalty for failure to provide "On Municipal Duty &indication of Debris vehicle" board on thevehicle.	Rs.500/-per vhicle per shift.
6	Penalty for failure to keep the vehicles well Painted.	Rs.1000/- per vehicle per trip
7.	Lump sum penalty for not starting the work after completion of mobilization period.	Rs.20,000/- per day .
8.	Penalty for failure to provide uniform	Rs.300/- per day per staff
9	Penalty for failure to provide Hand Gloves	Rs.200/- per day per staff
10	Penalty for failure to provide face mask	Rs.100/- per day per staff
11	Penalty for failure to provide safety shoes	Rs.300/- per day per staff
12	Penalty for failure to provide I-Card	Rs.100/- per day per staff
13	Penalty for failure to provide rain coat (only in Monsoon season)	Rs.200/- per day per staff
14	Penalty for failure to providing plastic/ tarpaulin cover on dumper or is torn out or	Rs.1000/- per such dumper/
15	Penalty for damaging collection spots / roads/ Municipal property by machinery (such as JCB).	Rs.500/- per spot

Note:

1. If the total penalty amount reaches 10% of contract cost, BSWML may consider to terminate the contract & initiate further legal action which may including blacklisting.

2. Rate of penalty will be increased by 10% every year rounding off to the nearest rupee.

42. Internal Performance Monitoring:

The Contractor shall propose Internal Performance Monitoring mechanism for effectiveness in project implementation covering all areas of service delivery including efficient redressal of complaints, and monitoring the performance of workforce etc.

43. Contract Period:

The Contract period shall be 15 years inclusive of Mobilization period. The following phases for the execution of the project are as follows-

43.1 Phase – I: Mobilization Period- One Month from the date of issue of work order or from the date of handing over of the site whichever is later.

To obtain all the necessary clearances & approvals from relevant authorities from the date of LOA.

43.2. ~~PhaseII-ConstructionPeriod-Eighteen Months~~

~~Complete the construction and commissioning of the C&D Waste Processing Facilityin terms of the Agreement within 6 months from obtaining the required clearancesanddevelopmentofCollection&Transportationfacilitiesaswellasfleetofadequate, suitable vehicles through procurement/ hiring/ owned within 12 monthsfrom the date of LOA. In case of delay due to unforeseen circumstances, the periodmaybefurtherextendedwith priorapprovalofHon. MC.~~

44. Nature & type of contract:

44.1 Joint venture/Consortium/LLPs/LLP is as per the KW-6 standard clause by limiting to maximum 3 partners. The clause pertaining this shall be taken from the standard format

44.2 The Selected Bidder in case of Consortium shall be required to form an appropriate Joint Venture, incorporated under the Indian Companies Act, 1956/2013, with the sole purpose to execute the Project in terms of this RFP.

45. Signing of Agreement:

45.1 The standard agreement form as per the RFP shall be indicated in the tender document

45.2 Agreement shall be signed within 60 days from the issuance of the LoA between BSWML and the Contractor. In case where the Selected Bidder requires additional time for signing of the Agreement, such request should be conveyed to BSWML in writing with reasons for such request for extension of time. BSWML shall grant extension of time for signing of the Agreement if BSWML considers the request made by the Selected Bidder/Consortium reasonable.

45.3 In case the Selected Bidder/Consortium fails to perform its obligation with respect to signing of the Contract Agreement with BSWML within the time specified or any extension granted herein after the issuance of LOA, the LOA shall be cancelled, Bid Security/Performance Security, as the case may be, shall be forfeited.

46. Permits & Clearances:

46.1 Permits and clearance shall be obtained as per Applicable Law which includes but not limited to C&D Waste Management Rules 2016, The Environment Protection Act 1986, The Air (Prevention and Control) Pollution Act 1981 and Water (Prevention and Control) Pollution Act1974 as amended from time to time and If any statement requirements specified by MOEF, CC, MOHUA, NITIAAYOG, CPCB and KSPCB.

46.2 The projects relating to C&D Waste may require a number of clearances including but not limited to the following:

- Prior Environmental Clearance.
- Clearance from Airport BSWML of India (if the Landfill Facility is within 20 Kms from the airport).
- Clearance from Development BSWML.
- Traffic Police clearance for vehicular movement in the city.
- If any statement requirements specified by MOEF, CC, MOHUA, NITIAAYOG, CPCB and KSPCB.

46.3 The Contractor shall be solely responsible for taking various statutory and non- statutory clearances for the Project from all concerned authorities. BSWML may assist the Contractor in procuring the clearances required for the Project.

46.4 This being a green initiative, may be entitled to Carbon Credits. The Contractor may be required to apply for availing the carbon credits, and can avail the same. If credits are generated, they will be shared in 70% (Concessionaire) to 30% (BSWML)

47. Treatment Process:

47.1 The successful Applicant shall set up a C&D waste management facility at designated site along with required site development work(s) such as but not limited to construction of site office, boundary wall/appropriate fencing, drainage work, electricity [inside and outside the processing unit] etc. The successful Applicant shall be expected to use a combination of technologies that includes crushing, screening, and separation etc. that will maximize waste treatment and would ensure no more than 10% of input waste is sent for disposal. The rejects shall be disposed-off by the contractor at his own cost in suitable land and for which no separate payment shall be made. The Selected Bidder shall be required to assess the quality and quantity of the C&D waste generated for arriving at the technology selection. The total system should be compliant with the

applicable rules and guidelines, framed in India, for the purpose. The successful applicant shall bear the total cost towards land, setting up the facility including design built , collection & transportation of C & D waste from the places in BSWML limits to the processing plant site, processing & disposal of C & D waste and operation & maintenance cost, charges towards all statutory requirements etc.

47.2 Bidder shall offer to provide proven plant equipment & machinery from the manufacturers such as

a. CDE Global (www.cdeglobal.com),
b. Terex (www.terex.in, www.terex.com),
c. Sandvik (www.mining.sandvik.com) ,
d. Green Machine (www.greenmachine.com),
e. NFLG China (www.en.nflg.com),
f. Krause Manufacturing (www.krausemanufacturing.com),
g. All Mineral (www.allmineral.com/en),
h. Winner Manufacturing (www.winnermanufacturing.com)
i. Other similar manufacturer

47.3 Manufacturer should meet the following requirements:

a. The bidder shall have to attach Authorization Certificate along with technical support from the manufacturer or from his authorized dealer.

b The technical specifications and literature of plant equipment & machinery offered must accompany the offer.

c. Proposed plant should be based on wet processing suppressing dust and noise pollution and contain basic units, but not limited to crusher, log-washer, hydro-cyclone, filters/ separator etc.

d. Similar Manufacturer means the Manufacturer of processing unit should have successfully installed & commissioned minimum 2 such units which should be in satisfactorily operation for 1 year, in last 5 years

e. The Contractor will be expected to use a combination of (mechanical processes) technologies / systems that includes crushing, screening, and separation etc.

f. Successful contractor should try to achieve zero discharge of rejects/ effluents from the proposed plant however maximum of 10% discharge of rejects/effluents will be permitted.

g. The entire C&D Waste processing and management system should be compliant with C&D Waste Management Rules 2016 (C&D Rules) or the applicable rules of the land and guidelines.

h. The Contractor shall use "Wet Process technology" must be used for processing of C&D waste to minimize nuisance due to excessive dust generated during processing activity (Provide technical specifications of the equipment).

i. Work on the Processing plant site should be carried out in shifts. However actual working hours are to be decided as per the applicable laws and directions/ consent given by CPCB/MPCB for operations of the plant.

j. Dust control Plan: Suitable measures shall be taken by the Contractor to control and manage the dust generated during processing of C&D Waste and ensure that dust generation is minimal even during the dry seasons.

48. Treatment Facility:

48.1 Responsibility of the successful bidder to develop his own private land of minimum 5 Acres for each model of minimum 70 TPH and upto 200 TPH process for the 500 TPD capacity of C&D waste to be collected for the process at 500 TPD plant location for such plants at four locations similar treatment process for 1000 TPD and adequate for storage C&D Waste Received as per the project requirement, obtain the necessary clearances required to develop the land, level the site and any other activity related to land development.

48.2 The Contractor shall clearly state the technology he will use for Processing of Waste and give a brief synopsis of the technology and its Collection, Transportation & Processing. The technology offered shall be proven and in use within or outside the Country under similar situations and the Contractor shall obtain necessary clearance from the State and/or Central Pollution Control Board as required at his own cost and efforts.

48.3 The Contractor shall have the liberty to upscale the technology during the Contract Period with the prior approval of BSWML and clearance from State Pollution Control Board for deriving larger benefits without causing any harm to the neighbourhood,

health and environment of the City and without putting any additional burden on BSWML.

48.4 The Contractor shall have to follow all the directions contained in the C&D Waste Rules as well as State Laws and Rules or any other applicable rules/ regulations/ guidelines as amended from time to time. In the event of any major change in the legal frame work in the Country or the State, necessitating a major change in the C&D Waste Processing Facility and Landfill.

48.5 Facility duly created by the Contractor following the present law and the Rules, he shall, on being asked by BSWML, comply with the new laws and the Rules at his cost and may ask for reasonable compensation which shall be determined by a technical committee that may be appointed by Government/ BSWML.

48.6 The Contractor shall use vehicles; equipment and machinery which meet the standard emission norms prescribed by the competent BSWML from time to time.

48.7 Revenue generated from processed C&D waste (components) shall be minimum as per the below derived calculations;

S. No	Description of the item	Percentage
1	Aggregate	24%
2	Sand	10%
3	Murrum/Soil	60%

49. The work at the site can be divided into following broad categories:

1. Site development
2. Constructing and operating of C&D waste processing system;
3. Collection, Transportation & Processing of infrastructure and equipment

1. The Site development:

The Scope of work to be carried out by the successful Applicant under site development is as mentioned below but not limited to clearing old structures, leveling the site and any

other activity related to land development, construction of site office, boundary wall / appropriate fencing, drainage, electricity (inside and outside the processing unit) etc.

2. Construct and Operation of C&D Waste Processing System:

   Responsibilities of Operator should be detailed to include the following: Undertaking necessary geotechnical survey to assess the hydrological and flooding potential of the site Construction of 70 TPH C&D Waste Processing Plant for each slice.

   In addition to this, infrastructure such as office building, internal roads, fencing wall/ internal boundaries to restrict the entry to specific areas of site to the authorized persons only.

   The Contractor shall also be responsible for setting up a laboratory for testing of recycled products from C&D waste.

   Providing furniture and fixtures, lighting arrangement inside the C&D Waste processing facility as well as outside, in the premises.

   Providing drainage system and cables, wiring with necessary electrical fixtures as necessary

   BSWML may facilitate all forms of support to the Contractor for obtaining certification/ 1 statutory clearances required for accessing water, electricity and telephone connection.

3. Collection, Transportation & Processing of infrastructure and equipment:

   The successful Bidder shall be responsible for construction, Collection, Transportation & Processing of tipper trucks, mechanical lifting arrangement to transfer the waste from bin into tipper truck, required infrastructure including treatment units [crushers and separators] etc. parking facilities, weighbridge, hook loaders.

   The C&D Waste Processing Facility by the Contractor must earmark separate space for storage of C&D Waste residues or aggregates obtained after processing for one month generation and while recycled products shall be stored for two/three – month generation.

Scope of Services more specifically set out in **Schedule 1**

ARTICLE 3
THE CONCESSION

3.1. Grant of Concession

3.1.1. Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, BSWML, awards to the Concessionaire the concession set forth herein including exclusive right, license and BSWML to establish the processing facilities and transport mechanism (the "**Concession**"), during the period of [24 (twenty four) months]for C&D Waste at the Collection, Transportation and Processing facilities as well as Construction of Project Facilities, and Operation and Maintenance Period of [15 (fifteen) years] commencing from Commercial Operation Date (the **"COD"**) of the Processing facilities, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth in this Agreement.

[Provided that the Concessionaire may, at any time no earlier than [5 (five) years], but no later than [2 (two) years] prior to the completion of the Concession Period upon issuing a notice to this effect to BSWML, request for an additional Concession Period on the terms and conditions set out herein and in accordance with the provisions of Article 3.4.]

3.2. Rights Associated with the Grant of Concession

Without prejudice to the generality of foregoing, the Concession hereby granted to the Concessionaire shall oblige or entitle (as the case may be) the Concessionaire to:

3.2.1. the Right of Way, access and license rights to use the Site for the purpose of and to the extent conferred by the provisions of this Agreement;

3.2.2. access to the Site from the Compliance Date, for the sole purpose of implementing the Project, provided, however, to the extent of applicability of Article 14.1.1, the Concessionaire shall be entitled to access the Site prior to the Compliance Date;

3.2.3. To Collection, Transportation and Processing the Project either itself or through such

Person/Sub-Contractor as may be selected by it;

3.2.4. Upon achieving COD of the Project, forming part of the Project, to Collection, Transportation and Processing the same till the Termination Date of the Project;

3.2.5. To obtain financing for the Project in the form of equity or debt, from domestic and from recognized foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project; and

Provided that BSWML shall be informed by the Concessionaire as to the creation of any security interest in favour of the Lenders within a period of [14 (fourteen)] days from the date such security interest comes into existence and provide to BSWML within such time, notarized true copies of any and all documents/ agreements relating thereto. Provided further, nothing contained herein shall (i) absolve the Concessionaire from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; (ii) authorise or be deemed to authorise the Lenders to implement and execute Project themselves; and (iii) under any circumstances amount to any guarantee from or recourse to BSWML;

3.2.6. To develop processing facility of design capacity of 10.80 lakhs Tons per annum on an average capacity on the Site provided by BSWML for this purpose in accordance with the C&D Waste Guidelines and other Applicable Laws;

3.2.7. To obtain the utilities required for enabling the construction of the Project, by fulfilling eligibility conditions (if any) and paying the applicable charges for the utilities;

3.2.8. To hold, possess, control the Sites, in accordance with the terms of the Concession Agreement, for the purposes of the due implementation of the Project;

3.2.9. To appropriate, possess, control and to further, at its sole discretion, utilize, renovate, modify, replace or demolish, free of any cost or charges or any liability for payment of compensation in respect thereof, all the buildings and structures and infrastructure that may be existing on Secondary Collection Points and Sites with reference to C&D Waste management in Project Area;

3.2.10. To develop the Project using such technology to establish [having a processing

capacity of 1750 TPD and a production capability of 70 TPH minimum and up to 200 TPH and to retain and appropriate any revenues generated from the sale of recycled products; such technology should be suitable and commercially viable for the purposes of implementing the Project, in accordance with terms of this Agreement, SWM Rules and Good Industry Practice;

3.2.11. To modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the Processing Project Facility, Good Industry Practices and the requirements of the Project except in respect of the building by-laws, subject to no disruption in services and obligations;

3.2.12. The Concessionaire may, as per requirement and in agreement with BSWML, subject to fulfilling the eligibility conditions and procuring all required approvals from related regulatory/ statutory authorities, develop, operate and maintain additional recycling or Processing facilities on the Site(s), provided that the same does not cause any adverse effect on its Project related obligations or increases in any manner the financial liability (including in relation to land requirement) of BSWML under the Agreement. In the event and so long as the Concessionaire meets the foregoing conditions, BSWML shall render such reasonable assistance that Concessionaire requests in this connection.

3.3. Concession Period

3.3.1. Subject to early Termination of this Agreement in accordance with its terms, the term of this Agreement is [15 fifteen] years from the Commercial Operation Date (the **"Concession Period"**) during which the Concessionaire is authorized to implement the Project including management of all facilities and resources required for integrated management of 1750 TPD C&D Waste in accordance with the provisions hereof:

Provided that in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination Date.

3.3.2. BSWML shall, at any time prior to the date of expiry of the Concession Period, have the right to grant concession with respect to the Project for a period which it may determine in its sole discretion, after the expiry of the Concession Period, through international competitive bidding amongst developers other than BSWML and any undertaking owned by it. BSWML further agrees that the Concessionaire shall have the right to participate in such competitive bidding and make its offer in accordance with the terms thereof. In the event that the Concessionaire is not the highest bidder, it shall have the first right of refusal to accept the concession, if its bid is in the range of plus-minus (+/-) [10% (ten per cent)] of the highest bid. Provided that the aggregate

amounts paid by the Concessionaire to BSWML during the Concession Period in the nature of liquidated damages in accordance with the terms of this Agreement, are not more than [15% (fifteen per cent)] of the amount of the Performance Security or not more than [5 (five)] incidents of Concessionaire Default shall have occurred for [6 (six)] consecutive months during the entire Concession Period. For the purposes of this Article 3.3.3, the aggregate amounts of liquidated damages paid by the Concessionaire to BSWML during the Concession Period shall be calculated at the present value, which shall be taken as on the Execution Date.]

3.4. Extension of Concession Period

BSWML / State Government may in its sole discretion, in the event the Concessionaire does not commit any Event of Default during the last [5 (five) years] of the Concession Period, agree to extend the Concession after the expiry of the Concession Period on same [or modified] terms and conditions for a term as mutually decided by the Parties by issuing a notice to the Concessionaire by no later than [6 (six)] months prior to the date of expiry of the Concession Period.

Provided that any such extension shall also lead to an extension of license agreement(s) for an equal period so as to make the license agreement co-terminus with extended Concession Period.

ARTICLE 4
CONDITIONS PRECEDENT

4.1. Conditions Precedent

4.1.1. Save and except as expressly provided in Articles 4, 7, 8, 9, 10, 11, 12, 19, 20, 22, 31, and 32 and any related Schedules or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.1 (the "**Conditions Precedent**"). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Articles 4.1.2, 4.1.3 or 4.1.4, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Article 4.1.1.

4.1.2. Conditions Precedent for BSWML

The Concessionaire may, upon providing the Performance Securities to BSWML in accordance with Article 9 and at any time after [15 (fifteen)] days from the Execution Date or on an earlier day acceptable to BSWML, by notice require BSWML to satisfy any or all of the Conditions Precedent set forth in this Article 4.1.2 within a period of [180 (one hundred and eighty)] days of receipt of the notice, or such longer period not exceeding [210 (two hundred and ten)] days as may be specified therein, and the Conditions Precedent required to be satisfied by BSWML shall be deemed to have been fulfilled when BSWML shall have:

(a) Procured for the Concessionaire the Right of Way to the Site(s) in accordance with Article 10;

(b) Provided a portion of land at the Dumpsite as demanded by the Concessionaire for setting up of Project Facilities for 1750 TPD C&D Waste, vacant and free from Encumbrances; provided, however, BSWML may add the task of clearance of a portion of land for setting up of Project Facilities for 1750 TPD C&D Waste to be collected, transported and processed as per the Scope of Work of this Agreement mentioned in RFP.

(c) Executed and procured execution of Substitution Agreement;

(d) Facilitated and ensured that the total C&D waste to be handled and unencumbered

possession of all Site(s) handed over to the Concessionaire.

(e) Facilitated the Concessionaire in terms of obtaining all Applicable Permits from the Departments concerned/ Competent BSWML, if requested by the Concessionaire, including permits in relation to environmental protection and conservation including but not limited to those specified in **Schedule 2**:

(f) Finalized and allocated location for setting up decentralized waste processing units, in consultation with the Concessionaire;

(g) Finalized and allocated Secondary Collection Points, if any, in the Project Area in consultation with the Concessionaire;

(h) Finalized and allocated to the Concessionaire the locations proposed for keeping the Designated Bins;

(i) Provided permits for the location of the land parcels identified for establishment of 5 processing plants with 500 TPD 4 nos. and 1000 TPD 1 nos. with minimum 70 TPH to 200 TPH processing capacity of C&D waste within 3 (three) months from the date of LoA;

(j) [Provided assistance and facilitated in execution of Power Purchase Agreement between the Concessionaire and Karnataka Electricity Board;]

(k) [Executed the Inter-LSGI Agreement between BSWML]; and

(l) Provided Access Roads to the Site as per Good Industry Practices.

Provided, that upon request in writing by BSWML, the Concessionaire may, in its discretion, waive the Conditions Precedent set forth in this Article 4.1.2.

4.1.3. Conditions Precedent for the Concessionaire

The Conditions Precedent required to be satisfied by the Concessionaire within a period of [90 (ninety)] days from the Execution Date shall be deemed to have been fulfilled when the Concessionaire shall have:

(a) Provided to the State Government and BSWML the copies (certified as true copies

by an authorised officer of the Concessionaire) of the constitutional documents of the Concessionaire;

(b) Provided the Performance Securities to the State Government and BSWML pursuant to Article 9;

(c) Prepared and submitted a detailed project report, covering technology proposed, demand assessment, technical feasibility, detailed cost estimates, capital investment plan, project financing details, revenue projections, environment & social impact assessment and detailed financial analysis, to BSWML, consistent with the technical plan submitted during the bidding stage within 3 (three) months from Compliance Date;

(d) Executed the Financing Agreements and delivered to BSWML [3 (three)] true copies thereof, duly attested by a director of the Concessionaire;

(e) Delivered to BSWML [3 (three)] true copies of the Financial Package and the Financial Model, duly attested by a director of the Concessionaire, along with copies of the Financial Model in an editable version either in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;

(f) Achieved financial closure i.e. procured and raised all the funds (debt, equity, etc.) necessary to finance the Project as evidenced by the funding documents becoming effective and the Concessionaire having immediate access to the funds there under;

(g) Finalized and taken over Secondary Collection Points in the Project Area in consultation with BSWML;

(h) Provided notarized true copies of its board resolution authorizing the execution, delivery and performance of this Agreement by the Concessionaire;

(i) Executed and procured execution of the Escrow Agreement with the State Government, BSWML, and the Escrow Bank in accordance with Article 19 and Schedule 17;

(j) Procured all Applicable Permits unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Applicable Permits, have been fulfilled as on date the Concessionaire claims satisfaction of all the

Conditions Precedent under this Agreement;

(k) Delivered to BSWML {from the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Article 7;

(l) Delivered to BSWML a legal opinion from the legal counsel of the Concessionaire with respect to BSWML of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;

(m) Provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Concessionaire.

(n) Executed and procured execution of Substitution Agreement with the State Government, BSWML and the Lenders in the agreed form set out in Schedule 9;

(o) Ensure no fresh Waste is dumped at the unauthorized spots within defined jurisdiction of the concessionaire assigned to collect, transfer 1750 TPD C&D Waste;

(p) [Made an application to Karnataka Electricity Regulatory Commission (the "**Power Regulator**") for fixing power tariff for the waste processing plant to be paid by the Karnataka Electricity Board , as provided Power Purchase Agreement (PPA) signed between Concessionaire and Karnataka Electricity Board separately];

(q) Procured at its own cost, water connection, power connection and other service connections to the Site;

(r) Provided that upon request in writing by the Concessionaire, BSWML may in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Article 4.1.

4.1.4. Conditions Precedent to be satisfied by the State Government

The State Government shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):

(a) work with BSWML to appoint the Project Engineer in accordance with Article 13;

(b) execute the Substitution Agreement with the Concessionaire, BSWML and the Lenders in the agreed form set out at Schedule 9; and

(c) execute the Escrow Agreement with the Concessionaire, BSWML, and the Escrow Bank in the agreed form set out at Schedule 17 and open the Escrow Account with the Escrow Bank;

4.2. Satisfaction of Conditions Precedent

4.2.1. Each Party shall make all reasonable endeavours at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent relating to it within a period of [180 (One Hundred & Eighty)] days from the Execution Date (the **"Compliance Period"**) unless specified otherwise;

4.2.2. The later of the date within such time when BSWML or the Concessionaire fulfills its Conditions Precedent (unless BSWML waives the same for the Concessionaire) shall be the date from which the relevant and respective obligations of the Parties hereunder shall commence (the **"Compliance Date"**), respectively.

4.2.3. Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.2.4. The Parties shall notify each other in writing at least [once a month] on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2.5. The Concessionaire shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, subject to confirmation by BSWML, notify BSWML of the occurrence of the Compliance Date.

4.3. Damages for delay by the State Government or BSWML

In the event that: (i) BSWML and the State Government does not procure fulfillment or waiver of the Condition Precedent set forth in Articles 4.1.2 and 4.1.4, respectively, within the period specified in respect thereof; and (ii) the delay has not occurred as a

result of breach of this Agreement by the Concessionaire or due to Force Majeure Event, the State Government or BSWML shall pay Damages to the Concessionaire of an amount calculated at the rate of [0.1% (zero point one per cent)] of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to the bid security.

4.4. Damages for delay by the Concessionaire

In the event that: (i) the Concessionaire does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Article 4.1.4 within the period specified in that Article; and (ii) the delay has not occurred as a result of breach of this Agreement by BSWML or the State Government or due to Force Majeure Event, the Concessionaire shall pay Damages to BSWML of an amount calculated at the rate of [0.2% (zero point two per cent)] of the Performance Security for each day‟s delay until the fulfillment of the Conditions Precedent, up to the maximum amount equal to the bid security and upon reaching such maximum amount, BSWML may, in its sole discretion and subject to the provisions of Article 23, terminate the Agreement. Provided that in the event of delay by BSWML in procuring fulfillment of the Conditions Precedent specified in Article 4.1.2, no Damages shall be due and payable by the Concessionaire under this Article 4.4 until the date on which BSWML shall have procured fulfillment of the Conditions Precedent specified in Article 4.1.2.

4.5. Commencement of the Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Article 4.1, are satisfied or waived, as the case may be, shall be the Compliance Date which shall be the date of the commencement of the Concession Period. For avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Compliance Date hereunder, by notice convey the particulars thereof to BSWML, and shall thereupon be entitled to commence development of the Project in accordance with the terms of this Agreement.

4.6. Non-Compliance with Conditions Precedent

4.6.1. In the event the Conditions Precedent for Concessionaire have not been satisfied within the stipulated time and BSWML or the State Government has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and BSWML or the State Government shall not be

liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it;

4.6.2. In the event this Agreement fails to come into effect on account of non-fulfillment of the Concessionaire's Conditions Precedent, the State Government or BSWML shall be entitled to forfeit and encash the Performance Security;

4.6.3. In the event the Conditions Precedent for BSWML or the State Government have not been satisfied within the stipulated time, then the Concessionaire shall have the option to either: (i) mutually extend the time period for satisfaction of the Conditions Precedent for BSWML or the State Government (as the case may be) or (ii) terminate this Agreement. In the event of termination, BSWML or the State Government shall pay to the Concessionaire, reasonable development costs, as determined through the mechanism enumerated below. In case of extension of time period for fulfillment of Conditions Precedent for BSWML or the State Government beyond a period of 180 (one hundred and eighty) days from the Compliance Date, the Concession Period shall be proportionately extended for the same period. Parties hereby agree that for determination of the said development cost, BSWML may appoint a financial consultant for determining such development cost, whose determination shall be final, conclusive and binding. For the purpose of this clause the term "**Development Cost**" shall mean the reasonable cost (if any) incurred by the Concessionaire and as determined in terms above in relation to and limited to any physical development of the Site;

4.6.4. In the event this Agreement fails to come into effect on account of the non-fulfillment of BSWML Conditions Precedent, or the State Government Conditions Precedent, BSWML shall in addition to payment of Development Cost in terms of Article 4.6.3 above, shall return the Performance Securities to the Concessionaire; provided there are no outstanding claims of BSWML on the Concessionaire.

4.7. Termination upon delay

4.7.1. Without prejudice to the Damages for delay prescribed in Articles 4.3 and 4.4 above, the Parties expressly agree that in the event the Compliance Date does not occur, for any reason whatsoever, within a period of [180 (one hundred and eighty)] days from the Execution Date or the extended period provided in accordance with this Agreement, then all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire and the Agreement may be terminated by the non-defaulting Party. Provided, however, that in the event the delay in occurrence of the Compliance Date is for reasons attributable to the Concessionaire,

the Performance Security or the bid security, as the case may be, of the Concessionaire shall be encashed and appropriated by BSWML as Damages thereof.

4.7.2. Instead of terminating this Agreement as provided in Article 4.7.1 above, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent. In the event of such extension in time for fulfilling Conditions Precedent, the Concession Period shall also be extended proportionately.

ARTICLE 5
OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, implement the Project, procure finance for and undertake the development, engineering, procurement, equipping, Collection, Transportation & Processing of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 Perform and fulfill all of the Concessionaire's obligations with respect to the Project set out in Schedule 1 and under this Agreement;

5.1.3 The Concessionaire shall arrange for and procure, at its own cost and risk, all infrastructure facilities and utilities for the Collection, Transportation and Processing of the Project, including procuring connection for and supply of electricity, water, gas and other utilities as may be necessary or required for the operation of the Project. The Concessionaire shall obtain all Applicable Permits and comply with the conditions there under for the procurement and use of such infrastructure facilities and utilities.

5.1.4 During the Concession Period, the Concessionaire shall obtain from the relevant Government Instrumentalities, the Applicable Permits (other than the Applicable Permits required to be obtained by BSWML under Article 4.1.2) and keep in force and comply with the conditions of all Applicable Permits for the development, Collection, Transportation and Processing of the Project.

5.1.5 The Concessionaire shall comply with all Applicable Laws (including without limitation all public and labour related laws and health, safety, and sanitation laws, as then in force) and conditions of all Applicable Permits (including keeping them valid and in force as required) while performing its obligations under this Agreement. Further, the Concessionaire shall ensure and procure that its Contractors, if any, comply with all Applicable Permits and Applicable Laws during their performance of any of the Concessionaire's obligations under this Agreement.

5.1.6 The Concessionaire shall procure that its Sub-Contractors, if any, shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person. For the purpose of this Agreement, the discharge of obligations by the Sub- Contractors shall be the obligation of the Concessionaire.

5.1.7 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project; perform and fulfill its obligations under the Financing Agreements;

(b) carry out C&D Waste by employing environment-friendly technologies

(c) maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and be solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby agrees to keep BSWML/ State Government indemnified against any claims, damages, expenses or losses in this regard and in no case and for no purpose shall the Project Engineer/ BSWML/ State Government be treated as the employers of the Concessionaire, in this regard;

(d) not do or omit to do any act, deed or thing which may in any manner violates any provision of this Agreement;

(e) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement or Applicable Laws and Applicable Permits;

(f) procure that all equipment and facilities comprising the Project are Collection, Transportation and Processing in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements as specified in **Schedules 3,4 and 5** and Good Industry Practice;

(g) support, cooperate with and facilitate BSWML/ State Government in the implementation and operation of the Project in accordance with the provisions of this Agreement;

(h) to comply with the timelines for setting up the Project Facilities;

(i) Endeavour to improve the ancillary conditions and infrastructure related to the Project including assistance to informal recycling workers, procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;

(j) right to enter into sub-contracts for the purposes of and subject to the terms of this Agreement;

(k) for 1750 TPD C&D Waste Collection, Transportation and Processing at the allocated site in conformity with the terms of this Agreement for disposal of residual inert matter and rejected waste;

(l) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period;

(m) ensure that the Project remains free from all encroachments and take all steps necessary to remove encroachments, if any;

(n) upon receipt of a request thereof, afford access to the Project to the authorised representatives of the Project Engineer/ BSWML/ State Government for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;

(o) bear all expenses towards uniforms, safety gear and waste handling equipment to all the waste lifters and drivers;

(p) ensure that the project is operational on all calendar days of the year;

(q) be responsible for the conduct of its staff employed for this project while on duty;

(r) shall obtain approval from transport department as applicable and obtain fitness certificate for the vehicles each year before the due date and shall bear any cost or expense associated with this;

(s) to operate, maintain, repair and renovate the project assets and project facilities, in accordance with, inter alia, the Applicable Laws, Applicable Permits and the requirements;

(t) submit the Operational Plan to BSWML (with a copy to the State Government) at least 1 (one) month before proposed Commencement Date and get the same approved;

(u) [commence Secondary Collection and Transportation of the C&D Waste from the Designated Bins and Collection Points within the Project Area at least [60 (sixty)]days prior to COD, during the Trial Operations period];

(v) [intimate to the Project Engineer, BSWML, and the State Government, the date of commencement of the Secondary Collection and Transportation (the "**Commencement Date**") at least 2 (two) weeks in advance, and place the Designated Bins at the locations at least 2 (two) days before actual date of commencement of Secondary Collection and Transportation services];

(w) procure, acquire and put into place at its own cost and expenses all the Project Assets and Project Facilities required by the Concessionaire to implement the Project during the Pre-COD Period so as to achieve COD within the time stipulated in this Agreement;

(x) promptly rectify and remedy any defects or deficiencies, at its own cost, if any pointed out by the Project Engineer in the Inspection Report and furnish a report within the stipulated time period in respect thereof to the Project Engineer;

(y) comply with all the performance parameters as specified in KPIs, set forth in Article 18; (aa) to carry out all necessary test(s) and get the approvals as per Applicable Law and in conformity with Good Industry Practices, prior to achieving COD;

(bb) pay all taxes, duties and outgoings, including utility charges relating to the project;

(cc) handover/transfer the Sites and immovable Project Facilities to BSWML upon Termination of this Agreement, in accordance with the provisions thereof;

(dd) provide live GPS feed of movement of transportation vehicles, camera feeds at weighbridge of Site to the Project Engineer, as and when sought by the Project Engineer;

(ee) be responsible and indemnify BSWML/ / State Government for any accident due to negligence or otherwise in the performance of the project; and

(ff) submit compliance as required to environmental agency and shall provide all information related to project as would be required by the Project Engineer/ BSWML/ State Government pursuant to any RTI query or any issue raised in State Assembly/ Parliament; and

5.2 Obligations relating to Project Agreements

5.2.1. It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement. Notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or any other agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2. Before finalisation, the Concessionaire shall submit to BSWML and the State Government the drafts of all Project Agreements and the Collection, Transportation and Processing contract (if any) or any amendments or replacements thereto for its review and comments, and BSWML and the State Government shall have the right but not the obligation to undertake such review and provide its comments and observations, if any, to the Concessionaire. Concessionaires shall appropriately make amendments as per review/comments/observations and re-submit the same to BSWML and the State Government for its review. Within [7 (seven)] days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to BSWML and the State Government a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For avoidance of doubt, it is agreed that the review and comments/ observations by BSWML / State Government on any Project Agreement or failure or omission of BSWML / State Government to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by BSWML/ State Government. No observation and/or review of BSWML/ State Government and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and/or liabilities under this Agreement in any manner whatsoever nor shall BSWML/ State Government be liable for the same in any manner whatsoever.

5.2.3. The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of BSWML/ State Government if such addition, replacement or amendment has, or may have, the effect of imposing or

increasing any financial liability or obligation on BSWML/ State Government, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against BSWML/ State Government. For avoidance of doubt, BSWML / State Government acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.4. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on any of the Project Assets as the case may be, without prior written approval of BSWML/ State Government, which approval BSWML may, in its discretion, deny if such sub-lease, sub- license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of BSWML/ State Government under this Agreement or Applicable Laws.

5.2.5. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle BSWML/ State Government to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event BSWML/ State Government does not exercise such rights of substitution within a period not exceeding [90 (ninety)] days from the Termination Date, the Project Agreements shall be deemed to cease to be in force and effect on the Termination Date without any liability whatsoever on BSWML/ State Government and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to BSWML/ State Government an acknowledgment and undertaking, in a form acceptable to BSWML/ State Government, from the counter party(ies) of each of the Project Agreements, where such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from BSWML/ State Government in the event of Termination or Suspension.

5.3 No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

(i) Force Majeure Event, subject to Article20;

(ii) BSWML Event of Default;

(iii) State Government Event of Default;

(iv) Compliance with the instructions of the Project Engineer/ BSWML/ State Government or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

5.4 Concessionaire's Representative

To fulfill the Concessionaire's obligations and for implementation of the Project in accordance with this Agreement, the Concessionaire shall deploy representative(s) (the "**Concessionaire Representative**") on its behalf including a team leader (the **"Team Leader"**). The Team Leader shall have full BSWML to act on behalf of the Concessionaire for all matters relating to this Agreement and shall be overall in charge to ensure implementation of the project in accordance with the provisions hereof. The Team Leader shall closely co-ordinate with the Project Engineer/BSWML/ State Government and shall be responsible to ensure redressal on an immediate basis, any objections, observations, shortcomings, defects or defaults pointed out by the Project Engineer during routine inspections and project review meetings and submit action take report to the Project Engineer/BSWML/ State Government within a period not later than 7 (seven) days from the date of conveying of such defect/shortcoming. The Team Leader or its nominee shall make themselves available for meetings as and when called upon by the Project Engineer, the State Government and BSWML.

5.5 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Project Engineer/BSWML/ State Government, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.6 Engagement of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly skilled and trained for their respective functions.

5.7 Equity Lock-in requirements

The Concessionaire acknowledges that:

5.7.1. The Selected Bidder shall hold [100% (one hundred per cent)] shareholding in the paid-up Equity capital of the Concessionaire until expiration of [1 (one)] year from COD, [51% (fifty one percent)] shareholding in the paid-up Equity capital until expiration of [10 (ten)] years from COD and thereafter [26% (twenty six per cent)] shareholding in the paid up equity capital during the remaining Concession Period.

Provided that in case the Selected Bidder is a Consortium of entities, then the lead member (the "**Lead Member**") of such Consortium and the member whose credentials were considered for prequalification for bid, shall have the majority equity share holding of the paid-up Equity capital of the Concessionaire and that all the members of the Consortium together shall hold [100% (one hundred per cent)] Equity capital of the Concessionaire, until expiry of [1 (one)]year from COD, [51% (fifty one percent)]shareholding in the paid-up Equity capital until expiration of [10 (ten)]years from COD and thereafter [26% (twenty six per cent)]shareholding in the paid-up Equity capital during the remaining Concession period. Provided further that a member of the Consortium meeting either the Technical Capacity or the Financial Capacity shall subscribe at least 10% (ten per cent) of the paid-up and subscribed Equity of the SPV until the 2nd (second) anniversary of the COD for member meeting the Technical Capacity and until the 1st (first) anniversary of the COD for the member meeting the Financial Capacity.

5.7.2. Any violation in the shareholding pattern in the equity lock-in requirements would be treated as Concessionaire Event of Default.

5.7.3. Exit from Consortium

(a) Any Consortium member other than the Lead Member shall be allowed to exit the Consortium anytime during the Concession Period post-COD and the Lead Member will be allowed to replace/absorb the shares and responsibilities of other Consortium members, subject to approval from BSWML and the State Government which will not be unreasonably withheld.

(b) Notwithstanding the provisions of Article 5.7.3(a) above, the member of the Consortium responsible for carrying out 1750 TPD C&D Waste may be allowed to exit the Consortium before COD, subject to receipt of Completion Certificate from BSWML upon satisfactory completion of works.

5.8 Obligations relating to management of the Concessionaire

5.8.1. The Concessionaire shall not, without the prior written approval of BSWML and the State Government, undertake or cause to be undertaken, any action for all or any of the following or any matter incidental or consequential thereto:

(a) to alter or add to the provisions of the memorandum of association;

(b) to alter or add to the articles of association;

(c) to change the name of the Concessionaire;

(d) to reduce the share capital;

(e) to commence any new lines of business;

(f) to enter into any contract or agreement with a related party with respect to such related party's appointed to any office or place of profit in the company, its subsidiary company or associate company;

(g) to make inter-corporate-loans and investments or guarantee or security (except where such security or payment is to be made to BSWML) to be given, if the aggregate amount thereof, exceeds the limit of [30% (thirty per cent)] of the Concessionaire's paid- up share capital; to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy Code, 2016;

(h) for various other matters pertaining to the winding up of the Concessionaire; and

(i) any other matter which is required by the Companies Act to be passed by a special resolution of the shareholders of the Concessionaire.

For the purposes of this clause, a “related party” shall have the meaning ascribed to it under the Companies Act, 2013.

5.9 EHS Standards and L&FS Standards

5.9.1. The Concessionaire shall at all times and throughout the Concession Perio Collection, Transportation and Processing comply with Applicable Laws including the relevant

Environmental, Health and Safety (the "**EHS**") Rules and Regulations and life and fire safety Standards (the "**L&FS Standards**").

5.9.2. The Concessionaire shall prepare and comply with the performance standards, including an environmental and sustainability plan stating how the Concessionaire intends to manage and mitigate risks in relation to EHS. Such performance standards shall take into consideration the principles set out in:

(a) [National EHS regulations;

(b) Real Estate (Regulation and Development) Act, 2016;

(c) National Building Code of India published by BIS and other statutory BIS standards applicable to projects of similar nature; and

(d) L&FS Standards.]

5.10 Obligations relating to Taxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all Taxes, levies, duties, cesses and all other statutory charges payable in respect of the Project..

5.11 Obligations relating to information

5.11.1. Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from BSWML/ State Government for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information to BSWML forthwith and in the manner and form required by BSWML/ State Government.

5.11.2. After receiving a notice from BSWML/ State Government for reasoned comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which BSWML/ State Government proposes to publish, the Concessionaire shall provide such comments to BSWML in the manner and form required by BSWML/ State Government.

5.12 Obligations relating to other charges

The Concessionaire shall make timely payments for all utility services in respect of the Sites, including water, sewage, electricity, telecommunication, internet and cable charges, etc.

ARTICLE 6
OBLIGATIONS OF BSWML

6.1. General Obligations of BSWML

6.1.1. BSWML shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.

a) BSWML issue the gazette notification to C&D waste generating citizens of the Bengaluru city to pay the tipping fee as a statutory norm to the authorized Concessionaire being appointed by BSWML to collect, transfer, transport and processing of the same. The tipping fee shall have two components.

b) Rate per Ton in Rs. --- towards collection and transportation of C&D waste on average distance of 30 KM radius including all wages, O&M expenses, fuel of the vehicles, amount on account of depreciation of the vehicles, capital cost recovery on account loans and interest, RTO registration charges, insurances and including all incidental charges that might be necessary to operate the vehicles

c) Rate per Ton in Rs. ---- towards operational loss during the process of the C&D waste by the concessionaire which shall include the capital cost of the processing plants and its electro mechanical components, men, equipment, spare, power consumption towards processing of C&D waste, taxes, levies, insurances and including all incidental charges that might be necessary to operate the processing plants.

d) As per PPP policy, 70% of the land to be used for establishing processing plants is available and same is available.

e) BSWML shall ensure that after obtaining the EC on name of BSWML, the land shall be transferred to Concessionaire before signing of the Agreement,

6.1.2. Subject to and in accordance with the provisions of this Agreement and Applicable Laws, BSWML agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform the following:

(a) identify and earmark / allocate parcel(s) of land, by itself, within or outside the Project Area for the purpose of setting up of Project Facilities including transfer stations with proper infrastructures to facilitate the concessionaire to operate their activities for the transfer of the primary collected C&D waste from the source generations spots and bring through7500 KG GVW vehicles to transfer to 28000 KG GVW vehicles, Processing Project Facility and decentralized units, etc., for scientific management of C&D Waste;

(b) Assist concessionaire to conduct an Aerial survey using latest technology such as

LIDAR/ Drone or any other updated technology to determine the indicative quantum and type of C&D Waste generation locations and provide the list of the C&D sites approved by BBMP or any other department which in turn implicate the generation of C&D waste and make this information available in the {Request for Qualification/Request for Proposal};

(c) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project, subject to the Concessionaire submitting its applications complete in all respect in a timely manner. BSWML agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Concessionaire;

(d) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;

(e) provide the Sites on leave and license basis free from Encumbrance to the Concessionaire and ensure that no barriers are erected or placed on or about the Sites by any Government Instrumentality or persons claiming through or under any Government Instrumentality, except for reasons of Safety Requirements, Emergency, national security, or law and order;

(f) not do or omit to do any act, deed or thing which may in any manner violate the provisions of this Agreement; support, cooperate with and facilitate the Concessionaire in the Collection, Transportation and Processing of the Project in accordance with the provisions of this Agreement;

(g) upon written request from the Concessionaire, execute the Substitution Agreement;

(h) engage an independent monitoring and appraisal entity (Project Engineer) who shall monitor, supervise, and review Concessionaire's progress details/activities. The Concessionaire shall submit monthly reports to the Project Engineer regarding progress of the Project. The Project Engineer shall validate the data provided by the Concessionaire in monthly progress reports;

(i) undertake on its own or through the Project Engineer, the development and management of ICT(Information Communication and Technology) and IoT (Internet of Things) based infrastructure (including sensors and video analytics) for monitoring the project, including but not limited to, GPS tracking of vehicles, Sensor based weight measurement in transportation vehicles, electronic weigh bridges at Site, surveillance cameras at Sites, etc., and a central command centre for all waste management projects in Karnataka;

(j) observe and comply with all obligations set forth in this Agreement, and any other Agreement to be executed with the Concessionaire;

(k) handover to the Concessionaire within [24 (twenty four) months] of the Execution Date, the existing infrastructure of Secondary Collection Points on as is where is" basis, if any;

(l) facilitate in a timely manner all such approvals, permissions and authorisations which Concessionaire may require or is obliged to seek from them under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorization for availing permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by BSWML within [30 (thirty)] days from receipt of such request from the Concessionaire, subject to the conditions of the applications / details submitted being complete and correct.

(m) approve the Operational Plan within [a week] of its submission by the Concessionaire;

(n) maintain the minimum Escrow Balance

(o) collect user fee as for source collection of C&D waste

6.2. Obligations relating to refinancing

Without prejudice to any rights or remedies of BSWML under this Agreement or otherwise, upon request made by the Concessionaire to this effect, BSWML shall, in conformity with any regulations or guidelines that may be notified by the Government Instrumentality, permit and enable the Concessionaire to secure refinancing on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; [provided, however, that the refinancing hereunder shall always be subject to the prior consent of BSWML, which consent shall not be unreasonably withheld.

BSWML shall endeavor to convey its decision on such request of the Concessionaire within [30 (thirty)] days of receipt of the proposal by BSWML.] For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

ARTICLE 7
REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

7.1. Representations and Warranties of the Parties

Each Party represents and warrants to the others that:

(a) It is duly organized, validly existing and in good standing under the laws of India;

(b) It has full power and BSWML to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;

(d) It has the financial standing and capacity to undertake the Project;

(e) This Agreement constitutes its legal, valid and binding obligation fully enforceable against it in accordance with the terms hereof;

(f) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof; and

(g) It shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

7.2. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to BSWML and the State Government that:

(a) it is duly organised and validly existing under the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;

(b) it has full power and BSWML to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(c) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement; this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

(e) all undertakings and obligations of the Concessionaire arising from the {RFP/RFQ} or otherwise shall be binding on the Concessionaire as if they form part of this Agreement;

(f) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;

(g) the information furnished in the Bid and as updated on or before the Execution Date is true and accurate in all respects as on the Execution Date;

(h) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(i) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi- judicial, Government Instrumentality or BSWML, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

(j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to

perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(k) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

(l) the SPV is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested BSWML to enter into this Agreement pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(m) all its rights and interests in the Project shall pass to and vest in BSWML on the Termination Date free and clear of all liens, claims and Encumbrances without any further act or deed on its part or that of BSWML, and that none of the Project Assets shall be acquired by it Subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement; no representation or warranty given by it contained herein or in any other document furnished by it to BSWML or the State Government, including the Bid or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;

(n) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of BSWML in connection therewith;

(o) all information provided by the Concessionaire in response to the {Request for Proposals/Qualification} or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;

(p) agree that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts;

(q) consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings; and

(r) the Concessionaire shall not venture into or continue any business which is in direct or indirect competition with the Project. In the event the Concessionaire engages in such activities, the same shall constitute a fundamental breach of this Agreement by the Concessionaire;

(s) all undertakings and obligations of the Concessionaire arising from the {Request for Proposals/Qualification} or otherwise shall be binding on the Concessionaire as if they form part of this Agreement

(t) further representations may be added depending on the specific circumstances of the Concessionaire.

7.3. Representations and Warranties of BSWML

BSWML represents and warrants to the Concessionaire that:

(a) It has full power and BSWML to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise the rights and perform the obligations specified under this Agreement on behalf of BSWML.

(b) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement. it has the financial standing and capacity to perform its obligations under this Agreement.

(c) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

(d) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on BSWML‟s ability to perform its obligations under this Agreement;

7.4. Representations and Warranties Authority

The State Government represents and warrants to the Concessionaire and BSWML that:

(a) it has the financial standing and legal capacity to execute this Agreement and perform its obligations under this Agreement;

(b) it has taken all necessary approvals to execute this Agreement and perform its obligations under this Agreement;

(c) this Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof; and

(d) it has complied with all Applicable Laws and Applicable Permits in all material respects.

7.5. Disclosure

(a) In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of it. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of a Party under this Agreement.

(b) Neither BSWML nor any of its agents or employees shall be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:

(i) any inaccuracy, omission, unfitness for any purpose of inadequacy of any kind whatsoever in the data disclosed by BSWML to the Concessionaire in relation to the Project; and/or

(ii) any failure to make available to the Concessionaire any materials, documents, drawings, plans or other information relating to the Project.

ARTICLE 8

DISCLAIMER

8.1. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, and all information provided by BSWML/ State Government or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. BSWML/ State Government makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against BSWML/ State Government in this regard.

8.2. The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1 above and hereby acknowledges and agrees that BSWML/ State Government shall not be liable for the same in any manner whatsoever to the Concessionaire, Associates or any person claiming through or under any of them.

8.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 8.1 above shall not vitiate this Agreement or render it voidable.

8.4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 8.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of BSWML/ State Government to give any notice pursuant to this Article 8.4 shall not prejudice the disclaimer of BSWML/ State Government contained in Article 8.1 and shall not in any manner shift to BSWML any risks assumed by the Concessionaire pursuant to this Agreement.

8.5. The Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided by BSWML/ State Government, any Government BSWML or their consultants and advisors to the Concessionaire and that it shall accept and act thereon at its own cost and risk.

8.6. The Concessionaire shall be solely responsible for the contents, adequacy and

correctness of the design, data, drawings and detailed engineering prepared or procured by the Concessionaire for implementing the Project.

ARTICLE 9
PERFORMANCE SECURITIES AND MOBILIZATION ADVANCE GUARANTEES

9.1. Performance Security

9.1.1. The Concessionaire shall for the due and punctual performance of its obligations hereunder relating to the Project simultaneously with the execution of this Agreement, furnish an unconditional and irrevocable bank guarantee, in favor of the State Government and BSWML, in the form as set out in **Schedule-6**, (the **"Performance Security"**) for a sum of corresponding to [9% (nine per cent)] of the Bid Project Cost during construction & mobilization period till Commercial Operation date of 1750 TPD C&D project. The Performance Security for construction shall be released after Commercial Operation date and a fresh Performance Security for O&M shall be applicable.

During the O&M period of the project, approved tipping fee per TPD multiplied with the total TPD under the contract for the duration of one month shall be considered as Bid Project Cost. A sum of corresponding to [9% (nine per cent)] of the Bid Project Cost for O&M period shall be furnished as unconditional and irrevocable bank guarantee, in favor of the State Government and BSWML, in the form Performance Security.

A fresh bank guarantee will be issued one month before construction of Processing facilities and valid until COD. Post-COD, the Performance Security shall be reduced to [25% (twenty-five per cent till the end of Concession Period or till the Termination Date, as the case may be.

9.1.2. The Performance Security or the amount retained by the State Government or BSWML as cash security shall be returned after the expiry of 30 (thirty) days from the COD, unless this Agreement is terminated earlier, in which case the Performance Security will be returned within 30 (thirty) days from the date of termination, subject to the State Government's or BSWML's right to receive any amounts from the Concessionaire under this Agreement.

9.1.3. The Performance Security shall secure the due performance of all the Concessionaire's obligations during the Construction Period.

Accumulated deduction will be effective from the end of each year. If deficiency to adjust such deduction, the same shall be deducted from performance security.

9.2. ESHS Performance Security

9.2.1. The Concessionaire shall have submitted to the State Government and BSWML, prior to the Execution Date an unconditional and irrevocable bank guarantee for an amount equal to [1% (one per cent)] of the Bid Project Cost (O&M period) (the **"ESHS Performance Security"**).

9.2.2. The ESHS Performance Security shall be valid until the Termination of the Agreement. The ESHS Performance Security shall have an initial validity period till COD, which must thereafter be renewed on a year-on-year basis, before the expiry of the 11th (eleventh) month of the relevant year, until the expiry of the Collection, Transportation and Processing period. If any of the ESHS Performance Security is not renewed by the expiry of the 11th (eleventh) month of the relevant year, then the State Government or BSWML shall be entitled to drawdown the total amount available under the ESHS Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the ESHS Performance Security.

9.2.3. The ESHS Performance Security shall secure the due performance of the Concessionaire's ESHS obligations during the Construction Period and the Collection, Transportation and Processing period, as set out in the approved ESHS Documents.
Accumulated deduction will be effective from the end of each year. If deficiency to adjust such deduction, the same shall be deducted from ESHS Performance Security.

9.3. Collection, Transportation & Processing Security

9.3.1. As Condition Precedent to the COD, within 60 (sixty) days of the Construction Completion Date, or 30 (thirty) days before COD, whichever is earlier, the Concessionaire shall furnish an unconditional and irrevocable bank guarantee to the State Government and BSWML, for an amount equal to [4% (four per cent)] of the Bid Project Cost (O&M Period) (the **"Collection, Transportation & Processing Security"**).

9.3.2. The Concessionaire shall furnish the Collection, Transportation & Processing Security in the same format as provided for the Performance Security in the RFP, with necessary modifications. The Concessionaire shall maintain the Collection, Transportation & Processing Security in full force and effect until the expiry of the Collection, Transportation and Processing period. The Collection, Transportation & Processing Security shall have an initial validity period of 1 (one) year, which must be renewed on a year-on-year basis, before the expiry of the 11^{th} (eleventh) month of the

relevant year, until the Termination of the Concession Agreement.

9.3.3. The Collection, Transportation & Processing Security shall secure the due performance of all the Concessionaire's obligations during the Collection, Transportation and Processing period.

Accumulated deduction will be effective from the end of each year. If deficiency to adjust such deduction, the same shall be deducted from 9.3. Collection, Transportation & Processing Security.

9.4. Extension of Performance Securities

9.4.1. If the Performance Security is scheduled to expire before the COD, then the Concessionaire shall arrange for an extension of the Performance Security at least 30 (thirty) days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the State Government and BSWML shall be entitled to drawdown the total amount available under the Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Performance Security, that is scheduled to expire.

9.4.2. If the ESHS Performance Security is scheduled to expire before the expiry of the Collection, Transportation and Processing period, the Concessionaire shall replace or arrange for an extension of the ESHS Performance Security at least 30(thirty) days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the State Government and BSWML shall be entitled to drawdown the total amount available under the ESHS Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the ESHS Performance Security.

9.4.3. If any Collection, Transportation & Processing Security is not renewed by the expiry of the 11th (eleventh) month of the relevant year of the Collection, Transportation and Processing period, then the State Government and BSWML shall be entitled to drawdown the total amount available under the Collection, Transportation & Processing Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Collection, Transportation & Processing Security.

9.5. Encashment of Performance Securities by the State Government and BSWML

9.5.1. The decision of the State Government or BSWML as to any breach/ delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Concessionaire and the Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the State Government or BSWML under this Concession Agreement is required to be provided in connection with any demand made by the State Government or BSWML to recover such compensation through

appropriation of the relevant amounts from the Performance Security/Collection, Transportation & Processing Security/ESHS Performance Security under this Agreement.

9.5.2. In the event of encashment of the Performance Security/Collection, Transportation & Processing Security/ESHS Performance Security by the State Government or BSWML, in full or part, the Concessionaire shall within 15 (fifteen) days of receipt of the encashment notice from the State Government or BSWML provide a fresh Performance Security/Collection, Transportation & Processing Security/ESHS Performance Security or replenish (in case of partial appropriation) the existing Performance Security, as the case may be. The provisions of this Article shall apply *mutatis mutandis* to such fresh Performance Security/Collection, Transportation & Processing Security/ESHS Performance Security. The Concessionaire's failure to comply with this provision shall constitute a default or breach of the Concession Agreement by the Concessionaire, which shall entitle the State Government and BSWML to terminate this Concession Agreement in accordance with the provisions hereof.

Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall subject to the State Government's and BSWML's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

9.6. Utilization of retained amount

9.6.1. The State Government and BSWML shall be entitled to utilize the retained amount in the same manner as it would utilise the Performance Security, the ESHS Performance Security or the Collection, Transportation & Processing Security, as the case may be.

(a) Upon receipt of a renewed or replacement Performance Security within 30 (thirty) days of the COD or expiry / termination of the Agreement, the State Government or BSWML shall return the unutilized cash security amount for the Performance Security to the Concessionaire.

(b) Upon receipt of a renewed or replacement ESHS Performance Security within 30 (thirty) days of the expiry / termination of the Term, the State Government or BSWML shall return the unutilized cash security amount for the ESHS Performance Security to the Concessionaire.

(c) Upon receipt of a renewed or replacement Collection, Transportation & Processing Security within 30 (thirty) days of the expiry / termination of the Collection, Transportation and Processing period, the State Government or BSWML shall return the unutilized cash security amount for the Collection, Transportation & Processing Security to the Concessionaire.

(d) The interest earned on any retained amounts on cash security shall be the property of the State Government and BSWML and the State Government or BSWML shall not be required to account to the Concessionaire for any such interest.

9.6.2. The State Government and BSWML shall have the right to draw on the Performance Securities and claim up to the amount guaranteed upon the Concessionaire's failure to satisfy any Condition Precedent or honour any of its obligations, responsibilities or commitments during the Construction Period, or any amount due and payable by the Concessionaire to the State Government or BSWML (including any Delay Liquidated Damages), in accordance with this Agreement.

9.6.3. The State Government and BSWML shall have the right to draw on the Collection, Transportation & Processing Securities and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its obligations, responsibilities or commitments during the Collection, Transportation and Processing period, or any amount due and payable by the Concessionaire to the State Government or BSWML (including any Availability Liquidated Damages), in accordance with this Agreement.

9.6.4. Without prejudice to its right to draw on the Performance Securities or, as the case may be, the Collection, Transportation & Processing Securities, the State Government and BSWML shall have the right to draw on the ESHS Performance Securities and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its ESHS related obligations, responsibilities or commitments during the Construction Period or the Collection, Transportation and Processing period, as set out in the approved ESHS Documents, in accordance with this Agreement.

9.6.5. Bank Guarantees would not be released in case of breach by the Concessionaire of any of the terms of the Agreement.

9.7. Cost to be borne by Concessionaire

The cost of procuring the Performance Security, the ESHS Performance Security and the Collection, Transportation & Processing Security shall be borne solely by the Concessionaire.

9.8. Demand under Performance Securities

9.8.1. The State Government or BSWML shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under the Performance Securities, the ESHS Performance Securities or the Collection, Transportation & Processing Securities, as the case may be. However, the State Government and BSWML shall provide the Concessionaire with a copy of any demand notice issued by them under the Performance Securities, the ESHS Performance Securities or the Collection, Transportation & Processing Securities, simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the relevant Performance Security, ESHS Performance Security or the Collection, Transportation & Processing

Security.

9.8.2. If the State Government or BSWML makes a demand under any Performance Security and/or ESHS Performance Security and/or Collection, Transportation & Processing Security, in part or in full, the Concessionaire shall immediately and in no event later than 15 (fifteen) days of such demand, restore the value of such Performance Security, ESHS Performance Security or Collection, Transportation & Processing Security to the amount stated in Sub-Clauses 9.1.1, 9.2.1 and 9.3.1.

9.9. Release of Performance Security by the State Government and BSWML

9.9.1. Within 30 (thirty) days from the COD or the termination of this Agreement, whichever is earlier, the Performance Securities or, as the case may be, the amount retained by the State Government or BSWML as cash security, shall be released to the Concessionaire after the expiry of 30 (thirty) days from the COD or termination of this Agreement, subject to the State Government's and BSWML's right to receive any amounts from the Concessionaire before or upon COD or Transfer Date.

9.9.2. Upon the expiry of the Collection, Transportation and Processing period or the termination of this Agreement, whichever is earlier, the Collection, Transportation & Processing Securities, the ESHS Performance Securities or, as the case may be, the amount retained by the State Government or BSWML as cash security, shall be released to the Concessionaire after the expiry of 30 (thirty) days from the Termination of this Agreement, subject to the State Government's and BSWML's right to receive any amounts from the Concessionaire before or upon Transfer Date.

9.10. Technology Performance Security

In accordance with Article 15.2.1 (e) (iv), the Concessionaire shall have submitted to the State Government and BSWML, prior to the Execution Date, an unconditional and irrevocable bank guarantee to BSWML, issued by the technology provider, corresponding to 5% (five per cent) of the aggregate Bid Project Cost (the "**Technology Performance Security**")][11]

9.11. Additional Performance Security

In the event of the Selected Bidder having submitted Additional Performance Security in accordance with the RFP document, then such Additional Performance Security shall be in force till the end of Construction period if the Bid Project Cost is found to

be unreasonable, and till the end of the Concession Period if Collection, Transportation & Processing Charges are found to be unreasonable. Notwithstanding anything contained herein, the Additional Performance Security shall be liable to be forfeited either fully or partially by the State Government or BSWML as it deems fit for the reasons mentioned in Article 24 of the Concession Agreement. The Additional Performance Security for the unreasonable Bid Project cost shall be returned 30 (thirty) days after COD and the Additional Performance Security for Collection, Transportation & Processing Charges shall be returned at the end of Concession Period.

ARTICLE 10
THE SITES

10.1. The Sites

10.1.1. The Sites of the Project Facilities shall comprise of the land as described in **Schedule 8**, and in respect of which the Rights of Way shall be provided and granted by BSWML to the Concessionaire on a leave and license basis under and in accordance with this Agreement (the "**Sites**").

10.1.2. The Sites would include (but not limited to) land for setting up of Project Facilities relating to 1750 TPD C&D Waste Collection, Transportation and Processing Facility at 5 locations for 5000 TPD at 4 locations and 1000 TPD at one locations shall be provided by BSWML at the free of cost for the establishment of the C&D processing plants.

10.1.3. Without prejudice and subject to the Agreement, the ownership of the Project except Sites, including all improvements made therein by the Concessionaire, during the Concession Period, shall at all times remain with the Concessionaire.

10.2. Grant of License over the Site

10.2.1. BSWML shall grant the Concessionaire a license over the Site along with all necessary Rights of Way, to enter upon, access and occupy the Sites, free of all Encumbrances in accordance with this Article 10, Applicable Laws, and Applicable Permits. The license granted to the Concessionaire shall include the exclusive right to:

(a) Collection, Transportation and Processing, the Project Facilities necessary for implementation of the Project at various Sites, in accordance with the SWM Rules, C&D Waste Guidelines and other Applicable Laws;

(b) install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Sites, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;

(c) use Access Roads, gates, fences and utilities at or about the Sites;

(d) construct, use, operate, maintain, replace and repair electric lines, telecommunication lines, water supply networks and other utilities required to undertake the Project at the Sites.

10.2.2. On and from the Compliance Date and subject to the provisions of this Agreement, BSWML shall grant the Concessionaire: (i) license over the Sites including the exclusive right to occupy and use the Sites to construct the Project Facilities; and (ii) all necessary Rights of Way to the Sites. Any charges payable for obtaining the Right of Way will be paid directly by BSWML.

10.2.3. BSWML shall provide the Site to the Concessionaire free of Encumbrances and encroachments as a Condition Precedent. If the Concessionaire discovers any hazardous substances at the time of handover of the Site by BSWML, BSWML will remove such hazardous substances at its own cost and expense. The Concessionaire's acceptance of the Sites at the time of BSWML's handover/giving access to the Sites shall be deemed to be unconditional acceptance and that there were no hazardous substance or any possible form of obstruction to the project at the time of handover of Sites and concessionaire shall be barred from raising any such issues, whatsoever, after the handover or having access to the Sites.

10.2.4. The Concessionaire shall not without the prior written consent or approval of BSWML use the Sites for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by BSWML.

10.2.5. The full ownership and title over the Sites shall vest with BSWML for the entire Concession Period.

10.2.6. BSWML warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, occupy the Sites, from such time that access is granted to the Concessionaire and until the expiry of the Concession Period or early termination of this Agreement. If the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Sites or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have a charge on the Site or any part thereof, BSWML shall, if called upon by the Concessionaire, defend such claims and proceedings.

10.2.7. Subject to any substitution rights exercised by the Lenders, the license granted by BSWML shall automatically terminate upon termination of this Agreement or expiry of the Concession Period.

10.2.8. The Concessionaire hereby irrevocably appoints BSWML (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the rights granted hereunder at any time after the Concession Period has expired or has been Terminated in terms hereof, whichever is earlier, a sufficient proof of which shall be the declaration of any duly authorised officer of BSWML, and the Concessionaire consents to it being registered for this purpose.

10.2.9. Termination of the Agreement shall automatically terminate the license granted over the Sites.

10.3. Site Data and Verification

10.3.1. BSWML has made available to the Concessionaire, the layout plans, Aerial survey of the 1750 TPD C&D Waste Dumpsite, load flow studies and all other relevant data, studies and reports in BSWML's possession in connection with the Sites.

10.3.2. The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Sites.

10.3.3. The Concessionaire shall also be deemed to have inspected and examined the Site and its surroundings, analysed and verified the accuracy and reliability of the studies, reports and data provided by BSWML and any other information available with respect to the Sites and to have satisfied itself as to all the relevant matters including:

(a) the nature of the Site, including the subsurface, hydrological, climatic and general physical conditions of the Site;

(b) the suitability of the Site for undertaking the construction and operation of the Project;

(c) the condition of the utilities available till the battery limits of the Sites;

(d) the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;

(e) the nature of Collection, Transportation and Processing services necessary for

the performance of its obligations under this Agreement;

(f) Applicable Laws and Applicable Permits required to be obtained and maintained to undertake the Project;

(g) the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;

(h) the suitability and adequacy of any access roads to the Sites and other utilities and facilities to be provided by the relevant Government BSWML; and

(i) all other matters that may affect the performance of its obligations under this Agreement.

Subject to Clause 10.3, the Concessionaire acknowledges and agrees that if any error or discrepancy is subsequently discovered in the data made available by BSWML, then BSWML and the Concessionaire may mutually arrive at a decision regarding any extension of the Scheduled Payment Milestone Completion Date, the Scheduled Construction Completion Date and/or compensation for additional costs incurred caused due to such error or discrepancy. Provided that the Concessionaire shall not be entitled to any extension as mentioned above, nor shall it be open to the Concessionaire to justify any default or delay on the ground of the Concessionaire having not visited or acquainted itself with the Sites and Sites‟ conditions in any manner whatsoever. Further, any misinterpretation of the data, studies and reports provided by BSWML shall not relieve the Concessionaire from the performance of its obligations under this Agreement on the ground that it could not reasonably be expected to have foreseen any of the matters listed in Clause 10.3.3 above, which affect or may affect the Project or the performance of any of its obligations under this Agreement.

10.4. Unforeseen Site Conditions

Without prejudice to Clause 10.3 above, if during the execution of the Project, the Concessionaire encounters any adverse physical conditions, which could not have been

reasonably foreseen by acting in accordance with Good Industry Practices, the Concessionaire may seek a Variation in accordance with Article 28. Upon receipt of a request for a Variation due to unforeseen Site conditions, if, in the opinion and sole discretion of BSWML, such conditions could not have been reasonably foreseen by a prudent developer acting in accordance with Good Industry Practices, then BSWML shall issue a Variation Order in accordance with Article 28. Any decision of BSWML regarding the existence of any unforeseen Site conditions shall be final and binding.]

10.5. Site Related Covenants

10.5.1. The Concessionaire agrees and undertakes that:

(a) the Concessionaire shall not transfer, alienate, assign, dispose of, sub-license or create any Security over any part of the Site or its rights and interest in the Site, other than as specifically permitted under this Agreement;

(b) the Concessionaire shall not allow any encroachment on, or unauthorized occupation of any part of the Site and in the event of any encroachment or unauthorized occupation, the Concessionaire shall immediately cause such encroachment or any unauthorized occupants to be removed from the Site. The Concessionaire shall not be entitled to any extension of time or costs incurred in removal of any encroachment or any unauthorized occupants from the Site;

(c) the grant of any rights to a Sub-Contractor or any other third party shall not interfere with or hinder the performance of the Concessionaire's obligations under this Agreement;

(d) the Concessionaire shall be wholly responsible for safety at and security of the Sites and the Project Facilities developed;

(e) the Concessionaire shall take all necessary measures to confine its operations, personnel and equipment to the Site and not encroach on any Adjoining Property;

(f) all minerals, fossils, articles of value or antiquity, structures and other remains or things of geological or archaeological interest and other objects with historic, antique or monetary value discovered at, on or under any of the Sites shall be dealt with in accordance with Applicable Laws and the Concessionaire shall take all necessary precautions to prevent its or its Sub-Contractor's personnel from removing or damaging any such article or thing. Further, immediately upon the discovery of any such article or thing of value, the Concessionaire shall inform

BSWML of such discovery and carry out the instructions of BSWML in this regard;

(g) the Concessionaire shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Concessionaire or the Concessionaire Related Parties;

(h) the Concessionaire shall not to do or permit to be done anything which might: cause destruction, scarring or defacing of natural surroundings in the vicinity of the Site;
(ii) be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or
(iii) cause any contamination or damage to any Adjoining Property,

and the Concessionaire shall, at its own expense, take all reasonable measures and precautions to avoid any such danger, nuisance, tort, damage or interference and shall make good any damage so caused.

If the construction works and/or the Collection, Transportation and Processing services cannot be carried out without interfering with the rights of the owner or occupier of any Adjoining Property, the Concessionaire shall promptly and at its own cost obtain all necessary third party consents and/or the approval of the concerned Government/ BSWML to undertake such construction works and/or the Collection, Transportation and Processing services. BSWML shall provide all assistance to the Concessionaire for procuring such approvals.

(i) The Concessionaire shall not sub-license whole or any part of the Sites.

(j) The Concessionaire shall obtain and maintain the Applicable Permits in such sequence as is consistent with the requirements of the Project. The Concessionaire shall be responsible and shall be in compliance with the terms and conditions subject to which Applicable Permits have been issued.

(k) During the Concession Period, the Concessionaire shall protect the Sites from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Sites or the Project Facilities, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

(l) The Concessionaire may landscape and develop the Sites and regulate the use thereof in accordance with the Good Industry Practice and in conformity with the provisions of this Agreement.

10.6. Access to State Government Related Parties and BSWML Related Parties

10.6.1. The Concessionaire shall ensure that the State Government Related Parties, and BSWML Related Parties have access to the Sites and the license granted to the Concessionaire over the Site shall always be subject to:

(a) the rights of BSWML, BSWML's Representative, State Government's Representative, the Project Engineer, and other BSWML Related Parties or State Government Related Parties to enter upon and access the Site to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Agreement, provided that BSWML and State Government shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct the construction and/or operation of the Project in any manner whatsoever; and the rights of the utility providers to enter upon and access the Sites for laying or installing telegraph lines, electric lines or for any other public purpose.

If any physical damage is caused to the Sites or the Project Facilities as a result of such access and use of the Sites by BSWML, BSWML's Representative, State Government Representative, the Project Engineer, and other BSWML Related Parties or State Government Related Parties then BSWML or the State Government shall bear the costs of remedying such damage and restoring the Sites and the Project Facilities.

10.7. Sites to be free from Encumbrances

The Sites shall be made available by BSWML to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to BSWML on account of any costs, compensation, expenses and charges for the acquisition and use of such Sites for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For avoidance of doubt, it is agreed that existing Rights of Way, easements, privileges, liberties and appurtenances to the Sites shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Sites.

ARTICLE 11
UTILITIES AND ASSOCIATED ROADS

11.1. Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the Government Instrumentalities owning the existing roads, Right of Way or utilities, on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with BSWML of the relevant Government Instrumentality. Further, BSWML shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any Right of Way necessary for such diversion.

11.2. Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws, provisions of Applicable Permits and with the assistance of BSWML, undertake shifting of any utility, including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site, if and only if such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of Project. The cost of such shifting shall be borne by the Concessionaire, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3. Felling of Trees

BSWML and the State Government shall assist the Concessionaire in procuring the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Project. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall in the sole discretion of BSWML/ State Government, be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to BSWML/ State Government.

ARTICLE 12
FINANCIAL CLOSURE AND SUBSTITUTION AGREEMENT

12.1. General Obligations

12.1.1 The Concessionaire expressly agrees and undertakes that it shall itself be responsible to arrange for financing and/ or meeting all financing requirements for the Project at its cost and shall enter into Financing Agreements with the Lenders for the same. To this end, the State Government and BSWML shall co-operate with the Concessionaire to achieve Financial Closure, including providing such consents and waivers as may be reasonably required by the Lenders.

12.1.2 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Closure within [90 (ninety)] days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [90 (ninety)] days, subject to payment of Damages to BSWML in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Security for each day of delay.

12.1.3 Damages specified herein shall be payable every week in advance and the period beyond the said [90 (ninety)] days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Closure has occurred solely as a result of any default or delay by BSWML in procuring satisfaction of the Conditions Precedent specified in Article 4or due to Force Majeure.

12.1.4 In case of a Concessionaire Event of Default, the State Government and BSWML acknowledge that the Lenders will have a right to substitute the Concessionaire in accordance with Article 25 and the Substitution Agreement. BSWML will suspend its right to step- in or terminate this Agreement until the expiry of the period available to the Lenders to exercise their substitution rights under Article 25.

12.1.5 The Concessionaire shall, upon occurrence of Financial Closure, notify the Project Engineer/ BSWML forthwith, and shall have provided to the Project Engineer / BSWML, at least 2 (two) days prior to Financial Closure, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in Microsoft Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

12.1.6 The Concessionaire shall maintain books of accounts recording all its receipts (including fees and other revenues derived/collected by it from or on account of any

of the Project Facilities and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits.

12.1.7 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of BSWML if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on BSWML, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against BSWML. For avoidance of doubt, BSWML acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

12.2. Security Creation

12.2.1. The Concessionaire shall be entitled to create assignment by way of Security over all of its rights, title and interests in and to the Concession Agreement and the Escrow Agreement in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project, provided that the creation of such Security will not result in any financial liability to BSWML or the State Government.

12.2.2. The Concessionaire shall be entitled to include the Lenders as co-insured and/or additional loss payees in any of the insurances taken by the Concessionaire in accordance with Article 28 and/or grant Security over the proceeds of such insurance.

12.2.3. Except for any Security created by operation of law and any Security created pursuant to this Article 12.2, the Concessionaire shall not be entitled to create any other Security over the Concession Agreement, the Escrow Agreement or insurance policies taken by it in favour of any third Persons, without the prior written consent of BSWML, which consent BSWML may deny in its sole discretion

12.2.4. The Concessionaire shall not be entitled to create any Security over the Site or any part thereof, or any of the Project Facilities whether in favour of the Lenders or any third Persons.

12.3. Termination due to failure to achieve Financial Closure

Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Closure does not occur, for any reason whatsoever, within the period set forth in this Article or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement

shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the

Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. In case of Termination due to such event, the State Government or BSWML

shall have the right to forfeit the Performance Security or bid security. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Compliance Date to precede the Financial Closure, the provisions of this Article shall not apply.

12.4. Substitution Agreement

12.3.1 This Agreement shall not be assigned by the Concessionaire. Provided, however, subject to the provisions of this Agreement, Lenders may be given the right of substitution by execution of the Substitution Agreement in the form annexed hereto as **Schedule 9**.

12.3.2 The Lenders may exercise the rights of step in or substitution as provided in the Substitution Agreement provided that the Nominated Company substituting the Concessionaire shall enjoy

all rights and be responsible for performing/ fulfilling all obligations of the Concessionaire under this Agreement.

Provided that in the event the Lenders are unable to substitute the Concessionaire by

Nominated Company as per the provisions of the Substitution Agreement, BSWML shall proceed to terminate the Agreement.

ARTICLE 13
PROJECT ENGINEER

13.1. Project Engineer

The State Government and BSWML shall appoint a third-party engineering firm with requisite technical expertise, knowledge and experience in the [design, engineering, construction, development, and operation] of [1750 TPD C&D waste, waste processing facilities, material recovery facilities, and other machinery and facilities forming part of the 1750 TPD C&D waste management system] as the engineer for the Project (the "**Project Engineer**"). The Project Engineer shall assist the State Government and BSWML in supervising the development of all the amenities and facilities required as basic and support infrastructure for implementation of the Project including construction/renovation, Collection, Transportation & Processing of facilities for 1750 TPD C&D Waste and the 1750 TPD C&D Waste management system such as infrastructure, collection and transportation vehicles, ICT infrastructure, machinery and equipment procured, inherited, installed and operated and all other Project related physical assets (the "**Project Facilities**") and shall support BSWML to monitor compliance with the KPIs during the Collection, Transportation and Processing period. The detailed scope of work of the Project Engineer is set out in **Schedule 10**.

13.2. Remuneration

All fees, costs, charges and expenses payable to the Project Engineer shall be borne by the Concessionaire at the rates mutually agreed by both the parties and in general the total fee for this purpose is 1.5% of the total project cost including the O&M cost.

13.3. Replacement of Project Engineer

13.3.1. The Concessionaire may request the State Government or BSWML to replace the Project Engineer if the Concessionaire believes that the Project Engineer is not performing its duties in accordance with this Agreement or is otherwise impeding the performance of the Concessionaire's obligations under this Agreement.

13.3.2. the State Government or BSWML may replace the Project Engineer in any of the following circumstances:

(a) if it has reason to believe that the Project Engineer has not discharged its duties in accordance with this Article and/or Schedule 10; or
(b) has received a formal complaint from the Concessionaire. In such a case the State

Government or BSWML will make necessary investigations and it is established that the Project Engineer has not discharged its duties in accordance with this Article and/or Schedule 10; or

(c) if the Project Engineer submits its resignation.

13.3.3. In appointing any replacement of the Project Engineer, the State Government and BSWML shall comply with this Article and Schedule 10.

13.4. Duties of Project Engineer

13.4.1. The Project Engineer shall be required to act independently, reasonably, fairly and expeditiously to ensure:

(a) the timely completion of construction of the Project Facilities on or before the Scheduled Construction Completion Date; and

(b) compliance with the KPIs during the Collection, Transportation and Processing Period.

13.4.2. The Project Engineer shall at all times during the Concession Period have the right to enter upon and access the Site. The Concessionaire shall have the right to accompany the Project Engineer during its inspection of the Project Facilities.

13.4.3. During the Construction Period, the Project Engineer shall inspect the Project Facilities at least once a month and prepare an inspection report, setting out the progress of the construction of the Project Facilities, defects or deficiencies, if any, and status of compliance with the Construction Plan, Specifications and Standards, and Designs and Drawings. The Project Engineer shall send the report to BSWML and the Concessionaire within 7 (seven) days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Project Engineer.

13.4.4. During the Collection, Transportation and Processing Period, the Project Engineer shall inspect the Project Facilities at least once a month and prepare an inspection report, setting out the defects or deficiencies, if any, and status of compliance with the KPIs (including specifically, the Influent Standards and the Discharge Standards). The Project Engineer shall send the report to BSWML and the Concessionaire within 7 (seven) days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Project Engineer. The Project Engineer shall also have the right to verify the results of the tests undertaken by the Concessionaire at any time during the Collection, Transportation and Processing Period of the quality of the compost or any other by-products created during waste management processes which are intended to be sold in the market.

13.4.5. The Project Engineer shall, at all times, have the right to attend any meetings held by the Concessionaire to review the progress of the construction or Collection, Transportation and Processing of the Project Facilities, and to provide its comments/suggestions regarding the progress as well as the manner in which the construction works, or Collection, Transportation and Processing services is being undertaken. Neither any comments/suggestions provided by the Project Engineer nor any failure to provide comments/suggestions shall be deemed to be an acceptance of the construction works or the Collection, Transportation and Processing services or a waiver of the Concessionaire's obligations to implement the Project, in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, the ESHS Documents, and all Applicable Laws and Applicable Permits.

13.5. Except as specifically provided in this Agreement, the Project Engineer shall have no BSWML, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.

13.6. The Concessionaire agrees that notwithstanding any review by the Project Engineer of any or all of the construction works or Collection, Transportation and Processing services, the Concessionaire shall bear all risk, responsibility and liability for the quality, adequacy and suitability of the Project Facilities.

ARTICLE 14
PROJECT MANAGEMENT UNIT

14.1 Composition

The State Government and BSWML shall appoint project level Project Management Unit (the **"PMU"**) comprising of a project manager, representative(s) of BSWML, and experts from relevant fields (including a third-party engineering firm). There shall also be a representative of Concessionaire in the Project Management Unit.

14.2 Role of the PMU

The PMU is expected to play a key role in discharging its functions as an extension to the State Government and BSWML, thereby facilitating the smooth implementation and operation of the Project. Broadly, the role of the PMU is to:

14.2.1. review, monitor and where required by the Agreement, to approve activities associated with the Collection, Transportation and Processing of the Project;

14.2.2. report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, PMU site visits and Tests;

14.2.3. assist the Parties in arriving at an amicable settlement of disputes should the need arise; and

14.2.4. review matters related to safety and environment management measures adopted by the Concessionaire for the Project.

14.3 Duties and functions

14.3.1. The PMU shall have the overall responsibility of monitoring and supervision of the Project.

14.3.2. The PMU shall coordinate with the State Government and BSWML and keep them updated on all activities and approvals accorded to the Concessionaire on a regular basis.

14.3.3. Further, any event of default by PMU as part of its obligations shall be treated as State Government Event of Default or BSWML Event of Default (as the case may be) and its consequence thereof.

14.4 Scope of Services

The services to be provided by the PMU are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

14.4.1 Design and Planning

(a) Ensure that all activities of the Project fully comply with all Applicable Laws and, governing the requirements of 17501 TPD C&D Waste disposal in India in particular, SPCB and CPCB standards for air, water and land.

(b) Review of the implementation plan submitted by the Concessionaire.

14.4.2. Construction Inspection and General Services

(a) The PMU would monitor, in accordance with Good Industry Practice, the progress in implementation of the Project. For this purpose the PMU shall undertake, *inter-alia*, the following activities and where appropriate make suitable suggestions:

(i) Ensure compliance by the Concessionaire with the provisions of this Agreement and Applicable Laws;

(ii) Act on behalf of BSWML or State Government as BSWML's Representative or State Government Representative regarding all contact with the Concessionaire unless expressly indicated otherwise;

(iii) Review of all Tests;

(iv) Interpret the requirements of the contract and make decisions regarding performance of the Concessionaire. The PMU shall inform and advise the State Government and BSWML in a timely manner all matters relating to the execution, progress, and completeness of the Project;

(v) Reject work which fails to comply with the specifications and requirements of the Agreement. Whenever considered necessary or advisable to ensure correction of defective work, the PMU may require inspection or testing of such work, whether or not such work be then fabricated, installed, or completed;

14.4.3. The PMU shall attend regular meetings (the **"Project Review Meetings"** or **"PRM's")** with the State Government, BSWML and the Concessionaire, from time to time. The PMU shall take notes at the meetings and provide a copy of the PRM minutes to each person who attended the meeting.

14.4.4. The PMU shall approve fortnightly progress reports

14.5 Remuneration

The remuneration, cost and expenses of the PMU shall be borne by the State Government and BSWML only.

14.6 Replacement

The State Government or BSWML may, in its discretion, terminate the appointment of any member in the PMU, other than the Concessionaire's representative, at any time and appoint another member in his place.

14.7 Tenure

The tenure of the PMU shall commence from the date of its constitution during the Compliance Period and extend up to the Termination Date, unless the Agreement is terminated earlier in terms hereof.

ARTICLE 15

CONSTRUCTION PERIOD

15.1 Commencement and Duration

15.1.1. The period for construction of the Project Facilities shall commence on and from the Compliance Date and shall continue until the Construction Completion Date (the "**Construction Period"**).

Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall, prior to the Compliance Date, be entitled to commence:

(a) soil or geophysical investigation or testing at the Sites; and

(b) appointment of Sub-Concessionaires for the construction works for the Project Facilities, with the prior approval of BSWML**.**

15.1.2. Carry out the processing of the C&D Waste to generate the Reusable bi products for the plant size of 1750 TPD with break up facilities of 500 TPD capacity plants at four locations and 1000 TPD at one location with processing capacity of minimum 70 TPH to 200 TPH on DBFOT on 100% concessionaire investment model for Capital cost and also for O&M Cost for the entire concessionaire period on PPP model shall be carried out by the Concessionaire during and as a part of the Construction Period of [24 months] from the Compliance Date. [Due to the nature of work, it may be difficult to be carried out during the months of monsoon. Hence, the number of days of monsoon showers in a year may be calculated mutually by the Parties and the Project Engineer and accordingly subtracted from the number of working days for Reusable bi products. Accordingly, the KPIs relating to Reusable bi products shall stand suspended for the number of days not counted as working days for Reusable bi products, and its details shall reflect in the KPI Adherence Report of the Project Engineer.][14]

15.2 Designs and Drawings

15.2.1. Basic Engineering Designs

(a) The Concessionaire shall prepare the Basic Engineering Designs in accordance with the Technical Specifications, Applicable Laws and Applicable Permits. The Basic Engineering Designs shall be drawn to scale, with accurate dimensions, to minimize construction delays, disputes and cost overruns and to ensure smooth construction of the Project Facilities and submitted in accordance with **Schedule**

11. The Project Facilities should be designed in a manner such that the Concessionaire can obtain consent to operate from the [State Pollution Control Board] for the operation of the Project Facilities. The Basic Engineering Designs should also specify the Proposed Technology(ies) for the implementation of the Project.

(b) Within 30 (thirty) days from the Execution Date, the Concessionaire shall submit 4 (four) hard copies and 1 (one) soft copy on a compact disc of the draft Basic Engineering Designs to BSWML for its review and approval.

(c) BSWML shall forward the Basic Engineering Designs to the Project Engineer for their review and comments.

(d) BSWML shall provide comments if any, on the draft Basic Engineering Designs (including any comments from the Project Engineer) to the Concessionaire or notify the Concessionaire of its approval of the draft Basic Engineering Designs within 20 (twenty) days from the date of receipt of the draft Basic Engineering Designs. BSWML may require the Concessionaire to amend or modify the draft Basic Engineering Designs if BSWML or the Project Engineer identifies any deficiencies, inaccuracies or shortcomings in the draft Basic Engineering Designs. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Basic Engineering Designs from BSWML, then the Concessionaire shall modify the draft Basic Engineering Designs to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, BSWML's/ the Project Engineer's comments on the draft Basic Engineering Designs and submit the revised Basic Engineering Designs to BSWML for its approval within 10 (ten) days of receipt of comments. The process set out in this Clause 14.2.1(a) shall continue until the Basic Engineering Designs are approved by BSWML in accordance with this Clause 14.2.1(c) and Clause 14.2.1(d). For the avoidance of doubt, approval of Basic Engineering Designs by BSWML/ the Project Engineer shall not relieve the Concessionaire of its obligations to prepare the Basic Engineering Design in accordance with Technical Specifications, Applicable Laws and Applicable Permits.

(e) Use of Proposed Technology

(i) The Concessionaire shall design and develop the Project on the basis of the Proposed Technology, approved by BSWML and the State Government as part of the Designs and Drawings.

(ii) If the Selected Bidder is the owner of the Proposed Technology, then the

Concessionaire shall enter into a technology license agreement with the Selected Bidder, under which the Selected Bidder will grant to the Concessionaire an irrevocable, perpetual, assignable, non-exclusive and royalty-free license to use the Proposed Technology to develop and operate the Facilities.

(iii) If the Selected Bidder does not own the Proposed Technology, then the Concessionaire shall, at its own cost, enter into a technology license agreement with the technology provider, under which the technology provider will grant to the Concessionaire an irrevocable, perpetual, assignable and royalty-free license to use the Proposed Technology. At no point will the State Government and BSWML be obliged to make any payments to the Concessionaire towards the licensing and use of the Proposed Technology.

(iv) In the event of the Selected Bidder opting for a technology other than those mentioned in the existing manuals, guidelines, and Applicable Laws, the technology provider shall have submitted to BSWML, prior to the Execution Date, the Technology Performance Security of 5% (five per cent) of the aggregate Bid Project Cost, which shall remain valid until [2 (two)] years from the COD. If the technology provider leaves the Project before the completion of [2 (two)] years, the Technology Performance Security shall be liable to be forfeited by the State Government or BSWML. Any modification required to make the Project operational in the absence of the technology provider, as suggested and approved by the State Government and BSWML, shall be undertaken by the Selected Bidder at his own risk. Any failure to meet the requirements as mentioned in this Clause shall be considered as a Concessionaire Event of Default.

(v) Upon the expiry or early termination of this Agreement, the Concessionaire shall assign the license and related rights to use the Proposed Technology for the sole purpose of Construction and Processing the Project at no additional cost to BSWML.

(vi) The Concessionaire shall indemnify the State Government and BSWML for any claims, losses, damages and costs suffered by the State Government and BSWML as a result of an infringement of any third party's Intellectual Property Rights caused by the operation and use of the Project Facilities.

15.2.2. Screening Report

(a) The Concessionaire shall prepare the Screening Report in accordance with the relevant safeguard policies/performance standards/Applicable Laws, and the Environment and Social Management Framework (the **"ESMF"**).

(b) Within 30 (thirty) days from the Execution Date, the Concessionaire shall submit 4 (four) hard copies and 1 (one) soft copy of the draft Screening Report on a compact disc to the Executing Agency for its review and approval.

(c) BSWML shall forward the draft Screening Report to BSWML for its review and comments.

(d) BSWML shall provide comments, if any, on the draft Screening Report to the Concessionaire or notify the Concessionaire of its approval of the draft Screening Report within 20 (twenty) days from the date of receipt of the draft Screening Report. BSWML may require the Concessionaire to amend or modify the draft Screening Report if BSWML identifies any deficiencies, inaccuracies or shortcomings in the draft Screening Report. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Screening Report from BSWML, then the Concessionaire shall modify the draft Screening Report to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, BSWML's comments on the draft Screening Report and submit the revised Screening Report to BSWML for its approval within 10 (ten) days of receipt of comments. The process set out in this Clause 15.2.2(d) shall continue until the Screening Report is approved by BSWML in accordance with this Clause 15.2.2(d).

15.2.3. The process set out in Clause 15.2.2 above shall apply to the submission and approval of the Designs and Drawings for the work corresponding to each subsequent Payment Milestone for the Project Facilities.

15.2.4. The Concessionaire shall construct the Project Facilities strictly in accordance with the approved Designs and Drawings. If there are any errors or deficiencies in the Technical Specifications, the Designs and Drawings shall take into account, address or rectify such errors or deficiencies. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Designs and Drawings without the prior written approval of BSWML. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the Designs and Drawings in accordance with the Clause 15.2. If the Concessionaire undertakes any construction work for the Project Facilities prior to the approval of the Designs and Drawings, it shall do so at its own risk and BSWML shall have the right to reject any such construction work that does not comply with the approved Designs and Drawings.

15.2.5. Notwithstanding any approval of the Designs and Drawings by BSWML, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Designs and Drawings. Subject to satisfaction of Conditions Precedent set out in Article 4, the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Designs and Drawings and complying with the requirements of the Clause 15.2.

15.2.6. The process set out in this Clause 15.2 above shall separately apply to works of Carry out the processing of the C&D Waste to generate the Reusable bi products for the plant size of 500 TPD on DBFOT on 100% concessionaire investment model for Capital cost and also for O&M Cost for the entire concessionaire period on PPP model.

15.3 Construction Plan

15.3.1. Within [30 (thirty)] days from the Execution Date, the Concessionaire shall prepare and submit to BSWML a detailed Construction Plan. The Construction Plan shall set out:

(a) The detailed plan for completing the construction (the **"Construction Completion Schedule"** as set out in **Schedule 12**) of the Project Facilities by the Scheduled Construction Completion Date; specific activities and extent of construction work to be performed by the Concessionaire to achieve each of the Project Facilities Payment Milestones; and

(b) the order in which the Concessionaire proposes to execute the construction of the Project Facilities.

15.3.2. BSWML shall review and provide comments, if any, on the draft Construction Plan to the Concessionaire or notify the Concessionaire of its approval of the draft Construction Plan within 30 (thirty) days from the date of receipt of the draft Construction Plan from the Concessionaire. BSWML may require the Concessionaire to amend or modify the draft Construction Plan if BSWML identifies any deficiencies or shortcomings in the draft Construction Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Construction Plan from BSWML**,** then the Concessionaire shall incorporate the suggestions made by BSWML and modify the draft Construction Plan to address any such comments, shortcomings or deficiencies identified by BSWML. Thereafter, the Concessionaire shall submit the revised Construction Plan to BSWML for its approval.

The process set out in this Clause 15.3.2 shall continue until the Construction Plan is approved by BSWML in accordance with this Clause 15.3.2.

15.3.3. The Concessionaire shall develop and construct the Project Facilities strictly in

accordance with the approved Construction Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Construction Plan without the prior written approval of BSWML**.** The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the Construction Plan in accordance with this Clause 15.3.

15.3.4. Notwithstanding any approval of the Construction Plan by BSWML, the Concessionaire shall, be solely liable for completing the construction of the Project Facilities by the Scheduled Construction Completion Date.

15.3.5. Within a maximum of [20 (twenty)] days from the Execution Date, the Concessionaire shall prepare and submit to BSWML a detailed plan Carry out the processing of the C&D WASTE waste to generate the Reusable bi products for the plant size of 500 TPD on DBFOT on 100% concessionaire investment model for Capital cost and also for O&M Cost for the entire concessionaire period on PPP model

(a) The detailed plan for completing Reusable bi products plant and clearing the land by the a date before or coincidental with COD specific activities and extent of work to be performed by the Concessionaire to achieve each of the Project Facilities Payment Milestones; and

(b) the order in which the Concessionaire proposes to execute the work of Reusable bi products plant.

15.3.6. BSWML shall review and provide comments, if any, on the draft Plan to the Concessionaire or notify the Concessionaire of its approval of the draft Plan within 20 (twenty) days from the date of receipt of the draft Plan from the Concessionaire. BSWML may require the Concessionaire to amend or modify the draft Plan if BSWML identifies any deficiencies or shortcomings in the draft Reclamation Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Plan from BSWML**,** then the Concessionaire shall incorporate the suggestions made by BSWML and modify the draft Plan to address any such comments, shortcomings or deficiencies identified by BSWML. Thereafter, the Concessionaire shall submit the revised Plan to BSWML for its approval. The process set out in this Clause 15.3.6 shall continue until the Plan is approved by BSWML in accordance with this Clause 15.3.6.

15.3.7. The Concessionaire shall execute Reusable bi products plant strictly in accordance with the approved Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Plan without the prior written approval of BSWML**.** The Concessionaire shall not commence execution works of Reusable bi products prior to approval of the Plan in accordance with this Clause 15.3.7.

15.3.8. Notwithstanding any approval of the Plan by BSWML, the Concessionaire shall be solely liable for land through Reusable bi products by the Scheduled Date.

15.4 ESHS Documents

15.4.1. Within 45 (forty-five) days from the Execution Date, the Concessionaire shall prepare and submit 4 (four) hard copies and 1 (one) soft copy on a compact disc of the ESHS Documents to BSWML in the format prescribed in **Schedule 13**.

15.4.2. The ESHS Documents shall set out the Project Facilities specific health, safety and environment policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project, developed in accordance with the applicable safeguard policies/performance standards/Applicable Laws, the ESMF, this Agreement, Applicable Permits, and Good Industry Practices.

15.4.3. The ESHS Documents shall comprise the following:

(a) Safeguard Documents

As part of the Safeguard Documents, the Concessionaire shall be required to:

(i) submit an update of the environment and social impact assessment report (the **"ESIA"**), which has been prepared by BSWML and shall be provided to the Concessionaire along with the RFP; and

(ii) prepare the environmental management plan (the **"EMP**").

or

(iii) in case of unavailability of such existing document, create ESIA and prepare the EMP

(b) Safety Documents

As part of the Safety Documents, the Concessionaire shall be required to prepare the following:

(i) environment, social, health and safety management plan (the **"ESHSMP"**);

(ii) environmental, social, health and safety management strategies and

implementation plan (the **"ESHS-MSIP"**). The ESHS-MSIP[15] shall include the following, for the purposes of managing the key ESHS risks in relation to the Project:

(A) traffic management plan to ensure safety of local communities from construction traffic;
(B) water resource protection plan to prevent contamination of drinking water;
(C) boundary marking and protection strategy for mobilization and construction to prevent offsite adverse impacts; and
(D) strategy for obtaining Concessionaire Applicable Permits prior to the start of relevant works.

(c) Code of Conduct

The Code of Conduct shall be prepared on the basis of the requirements set out in Schedule 13. The Code of Conduct shall apply to the Concessionaire's employees and sub-Concessionaires and shall set out the ESHS obligations of the Concessionaire under the Agreement relating to risks associated with labor influx, spread of communicable diseases, sexual harassment, gender-based violence, illicit behavior and crime, and maintaining a safe environment etc. The Code of Conduct shall also set out the manner in which the Code of Conduct will be implemented, including how it will be introduced into conditions of employment/engagement, what training will be provided, how it will be monitored and how the Concessionaire proposes to deal with any breaches.

(d) In the ESHS, the Concessionaire shall also be required to provide details of the core team of 3 (three) people for implementation of the Concessionaire's ESHS obligations, comprising: (i) health expert and safety specialist; (ii) an environmental specialist; and
(iii) social specialist, who meet the minimum qualification requirements specified in Schedule 13.

(e) Within 30 (thirty) days from the Execution Date, the Concessionaire shall prepare and submit 4 (four) hard copies and 1 (one) soft copy of Labour Influx and Workers Camp Management Plan to BSWML that addresses specific activities that will be undertaken to minimize the impact on the local community, including elements such as worker codes of conduct, training programs on HIV/AIDS, etc. A Workers‟ Camp Management Plan addresses specific aspects of the establishment and operation of workers‟ camps.

This Labor Influx and Workers‟ Camp Management Plan will include:

(i) mandatory and repeated training and awareness raising for the workforce about refraining from unacceptable conduct toward local community

members, specifically women;

(ii) informing workers about national laws that make sexual harassment and gender- based violence a punishable offence which is prosecuted;

(iii) introducing a Worker Code of Conduct as part of the employment contract, and including sanctions for non-compliance (e.g., termination), manual scavenging, engagement with local residents, child labor, nondiscrimination, harassment of coworkers including women and those belonging to Scheduled Castes and Scheduled Tribes and other minority social groups,

(iv) Concessionaires adopting a policy to cooperate with law enforcement agencies in investigating complaints about gender-based violence.

(v) training programs on HIV/AIDS and other communicable diseases,

(vi) workers‟ Camp Management Plan addressing specific aspects of the establishment and operation of workers‟ camps provided BSWML is unable to cater to the demand for affordable housing for this additional workforce in terms of rentals, hostels, apartments, etc.; and

(vii) complaint handling mechanism at the Project level.

15.4.4. BSWML shall forward a copy of the draft ESHS Documents to the Project Engineer and the State Government for its review and comments.

15.4.5. BSWML shall provide comments, if any, on the draft ESHS Documents (including any comments from the Project Engineer and the State Government) to the Concessionaire or notify the Concessionaire of its approval of the draft ESHS Documents within 30 (thirty) days from the date of receipt of the draft ESHS Documents from the Concessionaire. BSWML may require the Concessionaire to amend or modify the draft ESHS Documents if BSWML or the Project Engineer or the State Government identifies any deficiencies or shortcomings in the draft ESHS Documents. If the Concessionaire receives any comments, suggestions or instructions to modify the draft ESHS Documents from BSWML, then the Concessionaire shall modify the draft ESHS Documents to address any such comments, shortcomings or deficiencies identified by BSWML. Thereafter, the Concessionaire shall submit the revised ESHS Documents to BSWML for its approval. The process set out in this Clause 15.4.5 shall continue until the ESHS Documents are approved by BSWML in accordance with this Clause 15.4.5.

15.4.6. The Concessionaire shall ensure that its Sub-Concessionaires comply with and conform in all aspects of the ESHS Documents, approved in accordance with this Clause 15.4, in executing the Project. Any failure of the Concessionaire or the Sub-Concessionaires to comply with the ESHS Documents shall constitute a Concessionaire Event of Default. The Concessionaire shall indemnify BSWML and the State Government against all costs, expenses, penalties and liabilities

incurred/suffered by BSWML the State Government due to the Concessionaire's or any Sub-Concessionaire's failure to comply with the ESHS Documents in the course of execution of the Project. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved ESHS Documents without the prior written approval of BSWML**.**

15.4.7. Neither any approval of the ESHS Documents by BSWML, nor any failure to review and provide comments on the ESHS Documents shall excuse any failure by the Concessionaire to adopt proper and recognized safety and environment friendly practices during the execution of the Project. The Concessionaire shall bear all risk, responsibility and liability for the accuracy and adequacy of the final ESHS Documents in ensuring compliance with the applicable safeguard policies/performance standards/Applicable Laws, the ESMF, this Agreement, Applicable Permits and Good Industry Practices in the execution of the Project. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in preparation of the ESHS Documents and complying with the requirements of Clause 15.4.

15.5 Sub-contracting

15.5.1. The Concessionaire may enter into Sub-Contracts to perform any part of its Scope of Work during the Construction Period, with the prior intimation to BSWML.

15.5.2. The Concessionaire shall provide a copy of each proposed Sub-Contract, along with details of the relevant Sub-Concessionaire, for the record to BSWML, which should set out the precise Scope of Work to be Sub-contracted to such Sub-Concessionaire and should be consistent with the terms of this Agreement.

15.5.3. The Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Sub-Concessionaire.

15.5.4. If the Concessionaire proposes to novate or replace a Sub-Contract after submission of details as required under Article 15.5.2 above, then such novation or replacement shall also be intimated to BSWML.

15.5.5. The Concessionaire shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Sub- Concessionaire. No default under any Sub-Contract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Sub-Concessionaires.

15.5.6. The Project Engineer and BSWML have the right to access information and audit the Sub- Concessionaire files with regards to the Concession Agreement.

15.6 Concessionaire's Construction Obligations

15.6.1. The Concessionaire shall design, finance, construct and complete the Project Facilities and achieve the COD in accordance with Applicable Laws, Applicable Permits, Good Industry Practice, the Technical Specifications, the ESHS Documents, the Designs and Drawings, the Construction Plan and other provisions of this Agreement.

For this purpose, during the Construction Period, the Concessionaire shall:

(a) complete the work corresponding to each Payment Milestone by the Scheduled Payment Milestone Completion Date and complete the development and construction of the relevant Project Facilities by the relevant Scheduled Construction Completion Date, in a manner that:

(i) is in compliance with the Technical Specifications, the Designs and Drawings, the Construction Plan, the ESHS Documents, Applicable Laws, Applicable Permits and Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the Technical Specifications and any Applicable Laws, then the one setting out the more stringent requirements or specifications shall prevail;

(ii) the Project Facilities are fabricated, erected, installed and completed in accordance with the final Designs and Drawings;

(iii) the Project Facilities are free from all defects in design, materials, and workmanship;

(iv) the Project Facilities are safe, reliable and fit for purpose;

(v) the Project Facilities shall be capable of operating up to their respective design capacity; and

(b) maintain and comply with the conditions of all Applicable Permits in undertaking the construction of the Project Facilities;

(c) within 30 (thirty) days of the Compliance Date, and in any event, prior to the commencement of any construction of the Project Facilities, appoint a Person with sufficient skill and expertise to act as the Concessionaire's Representative. The Concessionaire's Representative shall monitor, coordinate and supervise the completion of the Project Facilities, and liaise with BSWML's Representative and the State Government Representative and the Project Engineer during the Construction Period and the Construction and Processing Period. At any time during the Concession Period, the Concessionaire may replace the Concessionaire's Representative with prior written notice to BSWML and the State Government;

(d) provide all necessary assistance to the Project Engineer, the State Government, and BSWML in undertaking inspection of the Project Facilities, and in performing its other obligations and duties under this Agreement;

(e) [provide all necessary assistance to the Financial Institutions to inspect the Site(s) and/or all accounts, records, and other documents relating to the submission of proposals and contract performance of the Concessionaire, as well as its Sub- Concessionaires, agents, personnel, consultants, service providers or suppliers relating to the Project and have them audited by auditors appointed by the Financial Institutions];[16]

(f) ensure that none of its employees, consultants, service providers, suppliers, or Sub- Concessionaires, who may be engaged in future, shall be engaged in corrupt, fraudulent, collusive, coercive or obstructive practice;

(g) reasonably consider and act upon the comments/suggestions made by the Project Engineer and BSWML during any meetings with the Concessionaire;

(h) rectify any defects and/or deficiencies in the Project Facilities, including any defects and/or deficiencies identified by the Project Engineer or BSWML;

(i) take all necessary measures to maintain the safety and security of personnel, material and property at the Site(s) and the Adjoining Properties, in accordance with the approved ESHS Documents and all Applicable Laws;

(j) ensure that all excavated materials, earthworks, waste materials and hazardous substances are stored and/or disposed in accordance with the ESHS documents, applicable laws and applicable permits

(k) submit monthly reports to the Project Engineer (with a copy to BSWML), no later than 10 (ten) days after the end of each month, which should set out the following:

(i) extent of progress of construction activities performed by the Concessionaire for the Project Facilities;

(ii) comparison of actual progress against the planned progress of construction works, reasons for delay, if any and steps taken by the Concessionaire to mitigate the delay;

(iii) details of any accident or hazardous incident at the Site(s) and the steps taken by the Concessionaire to mitigate the consequences of such accident

(iv) status of rectification of defects and/or deficiencies discovered by the Project Engineer or BSWML;

(l) ensure that an adequate number of suitably skilled and experienced Concessionaires, architects, workmen and other personnel are engaged to undertake the Project. The Concessionaire shall be solely responsible for the work performed by any staff and labour engaged by it to execute the Project and for payment of all applicable labour charges, fees, payable under Applicable Laws (including labour welfare legislations) in connection with the skilled and unskilled manpower employed for the Project, including specifically the building and Other Construction Workers Welfare Cess Act, 1996". The Concessionaire shall ensure that its Sub-Concessionaires provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site(s) and comply with all applicable labour laws. The Concessionaire shall indemnify and hold harmless BSWML and the State Government from and against all claims, liabilities, expenses, costs and losses suffered or incurred by BSWML or the State Government due to the Concessionaire's or any Sub-Concessionaire's failure to comply with any Applicable Laws (including labour welfare legislations);

(m) arrange for all equipment, machinery, tools and other resources required to undertake the Project and be solely responsible for such equipment, machinery, tools and resources;

(n) take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Sub-Concessionaires' personnel or equipment, to or from

the Site(s), does not interfere with local traffic in the vicinity of the Site(s);

(o) maintain accurate and systematic accounts and records of goods and material utilized

and other costs and expenses incurred in connection with the construction works for the Project Facilities, including all invoices, receipts, challans, vouchers, quotations and other records and documents with respect to the Project Facilities in accordance with Applicable Laws;

(p) obtain and maintain adequate insurances as per this Agreement; and

(q) prepare and keep up-to-date, "as-built" records of the execution of the construction work for the Project Facilities, showing the exact as-built locations, sizes and details of the works executed. The "as-built" records shall be kept on the Site(s) and be made available to the Project Engineer and BSWML for review and verification. The Concessionaire shall provide 4 (four) hard copies and 1 (one) soft copy on a compact disc, of the complete set of "as-built" drawings for the Project Facilities to BSWML as a condition precedent to the issuance of the Construction Completion Certificate.

(r) The Concessionaire shall not be ordinarily entitled to additional land beyond the quoted land in the Financial Proposal for the implementation of the Project. However, under unavoidable circumstances and in the interest of the Project, BSWML based on availability, may consider to allocate additional land for the implementation of the Project upon the request of the Concessionaire and such allocation shall be subject to the payment of [150% (one hundred and fifty percent)] of the [circle rate] of the land, for each additional acres of land and part thereof. If the additional land requirement changes position of the Selected Bidder vis-à-vis the second preferred bidder, then the Concessionaire shall pay to BSWML, a sum of equivalent to: (a) [150% (one hundred and fifty percent)] of the [circle rate] of the land for each additional acres of land and part thereof; or (b) the difference between Bid Project Cost of second preferred bidder and the revised Bid Project Cost of the Selected Bidder/Concessionaire; whichever is higher

~~**15.7 Waste to Energy Plant(s)**~~ **NOT APPLICABLE**

~~15.7.1. The Concessionaire [may at its sole option and discretion] construct Waste to Energy Plant(s) at the Project Facilities Site(s) to produce, utilize and/or sell the clean energy generated from the treatment of the Solid Waste/Legacy Waste. The~~

~~Concessionaire may, at its sole option and discretion, also construct a rooftop solar power plant(s) at the Project Facilities to produce clean energy.~~

~~15.7.2. If the Concessionaire chooses to construct a Waste to Energy Plant(s) at the Site(s), the Concessionaire shall undertake such construction of Waste to Energy Plant(s) at the Site(s) in accordance with all Applicable Laws and after obtaining all necessary approvals and consents to construct the Waste to Energy Plant(s) at the Site(s).~~

~~15.7.3. The Concessionaire shall not be entitled to any additional land, Construction Payments, or an extension of the Scheduled Construction Completion Date for construction of the Waste to Energy Plant(s).~~

~~15.7.4. The Concessionaire shall not be entitled to any additional O&M Payments for operating the Waste to Energy Plant(s)~~

~~15.7.5. It shall be the Concessionaire's obligation to obtain all required clearances and approval for purposes of setting up, operating and maintaining the Waste to Energy Plant(s).]~~

15.8 Rights and Obligations of BSWML and the State Government

15.8.1. During the Construction Period, BSWML shall:

(a) comply with all its obligations under Applicable Laws (including, specifically the [Act applicable in the State] Act) and Applicable Permits;

(b) make reasonable endeavors to assist the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;

(c) within 30 (thirty) days of the Compliance Date, and in any event, prior to the commencement of any construction for the Project Facilities, appoint a Person with sufficient skill and expertise to act as BSWML's Representative. BSWML's Representative shall liaise with the Concessionaire's Representative and the State Government Representative, and the Project Engineer during the Construction Period and the Construction and Processing period. At any time during the Concession Period, BSWML may replace BSWML's Representative with prior

written notice to the Concessionaire and the State Government;

(d) cause the Project Engineer to carry out timely inspection of the Project Facilities, and perform its other obligations and duties under this Agreement;

(e) upon progressive completion of construction works for the Project Facilities in accordance with the Technical Specifications, Designs and Drawings, Construction Plan and other provisions of this Agreement, as certified by the Project Engineer, issue the Milestone Completion Certificates and the Construction Completion Certificate to the Concessionaire;

(f) ensure that the Concessionaire enjoys peaceful access to the Site(s) and shall not assign, transfer, or otherwise dispose its rights, title, and interest in the Site(s) or create any Encumbrance over any part of the Site(s), which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement; and

(g) ensure that the Escrow Account is funded with the Minimum Escrow Balance.

15.8.2. During the Construction Period, the State Government shall:

(a) comply with all its obligations under the Applicable Laws;

(b) make the Construction Payments, on satisfactory completion of the relevant Payment Milestone; and

(c) within 30 (thirty) days of the Compliance Date, and in any event, prior to the commencement of any construction for the Project Facilities, appoint a Person with sufficient skill and expertise to act as the State Government Representative. The State Government Representative shall liaise with the Concessionaire's Representative, BSWML's Representative and the Project Engineer during the Construction Period and the Construction and Processing period. At any time during the Concession Period, the State Government may replace the State Government Representative with prior written notice to BSWML and the Concessionaire; and

(d) ensure that the Escrow Account is funded with the Minimum Escrow Balance.

15.9 Utilities

15.9.1. The Concessionaire shall obtain, install and maintain at its cost, all utilities necessary for undertaking the construction of the Project Facilities, including all temporary power and water connections, lighting facilities, telephone connections, internet connections, etc., at the Site(s). The Concessionaire shall bear the cost of all power, water, and other utilities consumed by it during the Construction Period, and the Concessionaire shall not be entitled to claim any reimbursement from BSWML or the State Government in this regard.

15.9.2. The Concessionaire shall not be entitled to any extension of time or costs to comply with its obligations in Clause 15.9.1 and Clause 15.9.2 above.

15.9.3. BSWML shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the construction of the Project Facilities.

15.10 Construction Timelines

15.10.1. The Concessionaire shall comply with the Construction Plan, the Designs and Drawings and the Technical Specifications and complete the construction of the Project Facilities on or before the date scheduled for completion of construction works (the "**Scheduled Construction Completion Date**"). The construction of processing plants can be taken at staggered manner for all five processing plants with prior approvals of BSWML for such staggered schedules.

15.10.2. Subject to Clause 15.10.3 below, the Concessionaire shall be entitled to a day-for-day extension of the relevant Scheduled Payment Milestone Completion Date or as the case may be, the Scheduled Construction Completion Date, if the completion of construction of the Project Facilities is delayed due to any of the following reasons (each such event, a **"Delay Event"**):

(a) occurrence of a Force Majeure Event, provided that the requirements of Article 15 have been complied with;

(b) a Qualifying Change in Law;

(c) any delay attributable to unforeseen Site conditions; or

(d) any variation proposed by BSWML in the Technical Specifications or the Designs and Drawings in accordance with Article 29.

(e) delay caused in complying with any instructions of BSWML or the Project Engineer, which instructions are not attributable to any default of the Concessionaire.

The Concessionaire shall promptly provide BSWML (with a copy to the State Government and the Project Engineer) with a notice upon becoming aware of any Delay Event listed at Article 15.10.2 above. The notice should specify the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Concessionaire and mitigation measures being taken by the Concessionaire.

The issuance of the notice under this Article 15.10.2, within 7 (seven) days from the date the Concessionaire became aware of the Delay Event, shall be a condition precedent to the Concessionaire's entitlement to an extension under Article 15.10.2.

For the avoidance of doubt, a Delay Event shall allow the Concessionaire only the extension of time and no additional costs.

15.10.3. Without prejudice to the Concessionaire's obligations to notify BSWML regarding the occurrence of a Delay Event above, the Concessionaire shall: (i) keep and maintain records as reasonably necessary to substantiate and establish claims for extensions under Article 15.10.2; and (ii) give BSWML and the Project Engineer access to such records and documents or provide BSWML and the Project Engineer with copies, if so requested.

15.10.4. If the Concessionaire claims an extension of time in accordance with Article 15.10.2 and BSWML is of the opinion that such delay was caused or materially contributed to by any concurrent or interacting cause or causes of delay not listed in Article 15.10.2 but solely attributable to the Concessionaire, then the Concessionaire shall not be entitled to any extension of time for the concurrent period of delay.

15.10.5. If two or more of the Delay Events listed in Clause 15.10.2 occur concurrently, then such concurrent period shall not be counted twice in determining an extension under Clause 15.10.2.

15.10.6. Except as provided in Clause 15.10.2, the Concessionaire shall not be entitled to any extension of time for any reason whatsoever, including due to:

(a) delay caused in complying with any instructions of BSWML or the Project Engineer which are attributable to any act or omission of the Concessionaire;

(b) failure of any Sub-Concessionaire to commence or carry out any work within the prescribed timelines;

(c) unavailability or shortage of equipment, materials, or any other resources;

(d) any delay in approving the drafts of the Designs and Drawings, the Construction Plan, the ESHS Documents or any other document submitted by the Concessionaire due to any deficiencies or shortcomings in such drafts of the Designs and Drawings, the Construction Plan, the ESHS Documents or other documents, as the case may be; or

~~(e) [the construction of Waste to Energy Plant(s) at the Site(s)]~~

15.10.7. Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any of the Delay Event shall be settled in a final and binding manner in accordance with Article 27.

15.11 Delay Liquidated Damages:

15.11.1. Subject to Clause 15.10.2, if the Concessionaire fails to complete the work corresponding to any Milestone by the relevant Scheduled Milestone Completion Date or fails to complete the construction of the Project Facilities by the Scheduled Construction Completion Date, then BSWML shall be entitled to liquidated damages for each day of delay beyond the Scheduled Milestone Completion Date, or, as the case may be, the Scheduled Construction Completion Date, at the rate of [[0.1% (zero point one percent)] of the Performance Security (in case of a delay in achieving a Project Facilities Milestone or completing the Project Facilities by the Scheduled Construction Completion Date)]for each day of delay up to [6 (six)] months from the Scheduled Milestone Completion Date, or the Scheduled Construction Completion Date as the case may be (the **"Delay Liquidated Damages"**).

The Delay Liquidated Damages will be payable until the work for the relevant Milestone is completed or, as the case may be, the construction of the Project Facilities is completed, as certified by BSWML in accordance with Article 15.11.

If the Concessionaire completes the construction of the Project Facilities by the Scheduled Construction Completion Date, the aggregate Delay Liquidated Damages recovered by BSWML under this Article 15.11.1 for a delay in achieving any Milestone shall be refunded by BSWML to the Concessionaire, without any interest.

15.11.2. BSWML shall be entitled to deduct the Delay Liquidated Damages from the

Concessionaire for any Milestone, and if such amounts are not available, BSWML shall have a right to invoke the Performance Security(ies) to the extent of the Delay Liquidated Damages.

15.11.3. The Parties acknowledge that the Delay Liquidated Damages are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by BSWML as a result of the delay in the completion of the Project Facilities, and not as penalty.

15.11.4. If, for any reason, the above paragraphs relating to the payment of Delay Liquidated Damages are void, invalid or otherwise inoperative so as to disentitle BSWML from claiming any Delay Liquidated Damages, then BSWML will be entitled to claim against the Concessionaire for general damages for delay in completing the works for the relevant Milestone by the Scheduled Milestone Completion Date, or for the delay in completing the construction of the Project Facilities by the Scheduled Construction Completion Date.

15.11.5. If the Concessionaire fails to complete the works for a Milestone within 6 (six) months of the Scheduled Milestone Completion Date or if the Concessionaire fails to complete the construction of the Project Facilities within 6 (six) months from the Scheduled Construction Completion Date, other than on account of any Delay Event (the **"Grace Period"**), then such failure shall be deemed to be a Concessionaire Event of Default.

15.11.6. The payment or deduction of Delay Liquidated Damages shall not relieve the Concessionaire from its obligations to complete the construction of the Project Facilities, or from any of its other duties, obligations or responsibilities under the Agreement. The Concessionaire shall use and continue to use its best endeavors to avoid or reduce further delay in completing the Project Facilities.

~~15.11.7. Bonus on early completion:~~ **NOT APPLICABLE**

~~If the Construction Completion Date for a Project Facilities occurs prior to the Scheduled Construction Completion Date, the Concessionaire shall be entitled to a bonus equal to [0.05% (zero point zero five per cent)] of the relevant Performance Security for each day by which the Construction Completion Date precedes the Scheduled Construction Completion Date.~~

15.11.8. Testing and Commissioning of the Project Facilities

(a) Upon completion of construction of each Project Facilities, in accordance with

the requirements set out in this Agreement, the Concessionaire shall issue a notice to BSWML, with a copy to the State Government, requiring it to be present at the Site(s) on the date specified in such notice to undertake a final inspection of the completed Project Facilities and conduct any tests required to ensure that the Project Facilities complies with the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits.

(b) Within 5 (five) days from the date of receipt of a notice under Article 15.12.2(a) above, BSWML may request the Concessionaire to vary the date of the final inspection and tests and the Concessionaire shall accommodate such request, provided that, such date shall be no later than 7 (seven) days from the date specified in the notice received from the Concessionaire under Article 15.12.2(a) above.

(c) The Concessionaire shall, on the date specified in the notice issued under Article 15.12.2(a) or on such other date as may be agreed with BSWML, carry out the tests in accordance with the instructions and under the supervision of BSWML and in accordance with **Schedule 14**, to demonstrate that the Project Facilities complies with the requirements of Clause 15.6.

(d) If BSWML is not satisfied with the results of the tests or inspection, then the Concessionaire shall remedy any defects or deficiencies in the Project Facilities, identified by BSWML or revealed through the tests and the Project Facilities shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that BSWML is satisfied that the Project Facilities has been completed in accordance with Clause 15.6 and is safe and fit for purpose. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Project Facilities and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the Project Facilities.

(e) If BSWML is satisfied with the results of the tests and inspection of the Project Facilities, BSWML shall issue the Milestone Completion Certificate in respect of the last Payment Milestone to the Concessionaire, with a copy to the State Government, within 7 (seven) days from the date of inspection and testing of the completed Project Facilities. The issue of the Milestone Completion Certificate for the last Payment Milestone shall certify that the Project Facilities has been completed in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits and the Project Facilities is safe and fit for purpose.

(f) If BSWML fails to:

(i) inspect or witness the testing of the Project Facilities within 14 (fourteen) Business Days from the date of receipt of notice from the Concessionaire issued under Article 15.12.2(a) or such other date as may be agreed with the Concessionaire;

(ii) notify the Concessionaire of any defects or deficiencies in the Project Facilities within 7 (seven) Business Days from the date of inspection and testing of the Project Facilities; or

(iii) issue the Milestone Completion Certificate for the last Payment Milestone within 7 (seven) Business Days from the date of inspection and testing of the Project Facilities,

Then, such delay shall be treated as a Delay Event, which will entitle the Concessionaire to a day-for-day extension in the Scheduled Payment Milestone Completion Date and the Scheduled Construction Completion Date.

15.11.9. Issue of Completion Certificate

(a) The Concessionaire may, upon completion of obligations and responsibilities of works relating to Reusable bi products plant at the Site(s) assigned by BSWML, in accordance with this Agreement, by notice inform BSWML with a copy to the State Government of such completion of works.

(b) Within [30 (thirty)] Business Days from the date of issuance of the notice as provided in Article 15.11.9(a), BSWML shall issue the Completion Certificate in the format prescribed in **Schedule 15** for subject work to the Concessionaire, subject to the following conditions having been fulfilled by the Concessionaire:

(i) the Concessionaire having cleared the Site(s) and removed all equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site(s);

(c) If BSWML fails to issue the Completion Certificate for Construction to the Concessionaire within [30 (thirty)] Business Days from the date of satisfaction of the conditions set out in Clause 1.12(c) (ii) above and fails to notify the Concessionaire of any reasons for the failure to issue such Completion

Certificate, then, the Completion Certificate at the Site(s)shall be deemed to have been issued to the Concessionaire upon the expiry of the [30 (thirty)] Business Days period.

(d) The date of the issuance or deemed issuance of the Completion Certificate shall be the completion date for the Site(s).

(e) Upon receipt of the Completion Certificate, the member of the Consortium shall be allowed to exit the Consortium in accordance with the Article 5.7.3 of this Agreement.

15.11.10. Issue of Construction Completion Certificate of Project Facilities

(a) Within [7 (seven)] Business Days from the date of issuance of the Milestone Completion Certificate for the last Payment Milestone, BSWML shall issue the Construction Completion Certificate for the Project Facilities to the Concessionaire with a copy to the State Government, subject to the following conditions having been fulfilled by the Concessionaire:

(i) the submission of 4 (four) hard copies and 1 (one) soft copy on a compact disc of complete sets of the „as-built" drawings of the Project Facilities;

(ii) the Concessionaire having obtained all Applicable Permits necessary for commencement of the REUSABLE BI PRODUCTS services (including specifically, the consent to operate from the [State Pollution Control Board] for the operation of the Project Facilities);

(iii) the Concessionaire having obtained adequate insurance for the Construction and Processing period in accordance with Clause 11.2;

(iv) the Concessionaire having engaged sufficient number of adequately skilled Reusable bi products personnel to perform the services during Processing period; and

(v) the Reusable bi products Manual having been approved by BSWML; and

(vi) the Concessionaire having cleared the Site(s) and removed all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site(s).

(b) If BSWML fails to issue the Construction Completion Certificate for the Project Facilities to the Concessionaire within [7 (seven)] Business Days from the date of satisfaction of the conditions set out in Clause 15.11.10(a) above and fails to notify the Concessionaire of any reasons for the failure to issue the Construction Completion Certificate for the Project Facilities, then, the Construction Completion Certificate for the Project Facilities shall be deemed to have been issued to the Concessionaire upon the expiry of the [7 (seven)] Business Days period.

(c) The date of the issuance or deemed issuance of the Construction Completion Certificate shall be the Construction Completion Date for the Project Facilities.

15.12 Trial Operations

15.12.1. Subject to Clause 15.13.3 below, within [1 (one)] day of the issuance or deemed issuance of the Construction Completion Certificate for the Project Facilities to the Concessionaire, the Concessionaire shall commence the Trial Operations of the Project Facilities in accordance with the trial operation procedures to determine whether the Project Facilities meets the KPIs on a continuous basis and is fit and ready to be placed into commercial operations in accordance with this Agreement.

15.12.2. Concessionaire shall ensure that adequate quantity of Reusable bi products is delivered to the Project Facilities[17] during the Trial Operations to enable the Concessionaire to demonstrate that the Project Facilities meets the Technical Specifications and the KPIs.If the Concessionaire fails to commence or continue the Trial Operations, due to the inadequate quantity or inferior quality of the Reusable bi products, then the Concessionaire shall promptly notify BSWML. If in the opinion of BSWML, the quantity or quality of Reusable bi products is not adequate to undertake Trial Operations, then BSWML shall extend the time period for the Trial Operations. In such case, the date scheduled for commencement of operations (the **"Scheduled COD"**) will also be extended on a day-for-day basis, provided that the Scheduled COD shall not be extended beyond the date which is [6 (six)] months from the Construction Completion Date.

15.12.3. During the Trial Operations, BSWML shall or shall cause the Project Engineer to monitor the performance of the Project Facilities on a regular basis to ensure that the Project Facilities meets the Technical Specifications.

15.12.4. If BSWML, or, as the case may be, the Project Engineer is of the view that: (i) the Trial Operations are not being conducted in accordance with the Trial Operations

Procedure; or (ii) there are any defects or deficiencies in the Project Facilities, BSWML shall instruct the Concessionaire to follow the trial operation procedures and/or rectify the defects and deficiencies to ensure compliance with the KPIs.

It is clarified that no Availability Liquidated Damages are payable by the Concessionaire during the Trial Operations period for a failure to achieve the KPIs. However, for the Trial Operations to be successfully concluded, the Concessionaire must demonstrate that the Project Facilities consistently and continuously meets the KPIs during the last [20 (twenty)] days of the [3 (three)] months Trial Operations period, as may be extended in accordance with Clause above. If the Project Facilities fails to achieve the KPIs on a continuous basis during the last [20 (twenty)] days of the [3 (three)] months Trial Operations period (as extended in accordance with Clause above, then the Trial Operations period shall be extended by another 20 days. Trial Operations shall continue until the Concessionaire can demonstrate that the Project Facilities consistently achieves the KPIs for 20 (twenty) consecutive days.

15.12.5. If the Concessionaire has been able to consistently achieve the KPIs for [20 (twenty)] consecutive days (as supported by daily reports), the Concessionaire shall issue a notice to BSWML requiring BSWML to undertake a final inspection of the Project Facilities. BSWML shall have the right to undertake such final inspection within [5 (five)] Business Days of a notice being issued by the Concessionaire.

15.12.6. If, upon final inspection, BSWML is satisfied that the Project Facilities meets the KPIs and the Technical Specifications, and are capable of safe and reliable operations, then, BSWML shall issue the Trial Operations Completion Certificate for the Project Facilities to the Concessionaire within [7 (seven)] days of BSWML undertaking a final inspection of the Project Facilities.

15.12.7. If, upon final inspection, BSWML believes that the Project Facilities does not comply with the KPIs and/or Technical Specifications, then BSWML may reject the Project Facilities and terminate this Agreement. Upon termination of this Agreement, the consequences set out in Article 24.4.1 and Article 24.4.7 shall follow.

15.12.8. If BSWML: (i) does not undertake a final inspection of the Project Facilities within [5 (five)] Business Days of receipt of a notice from the Concessionaire;or (ii) fails to notify the Concessionaire of any defects in the Project Facilities within [7 (seven)] days of undertaking a final inspection; or (iii) fails to issue a Trial Operations Completion Certificate within [7 (seven)] Business Days from the date of the final inspection, then the Trial Operations shall be deemed to have been successfully completed for Project Facilities and the Trial Operations Completion Certificate will be deemed to have been issued to the Concessionaire upon the expiry of the [5 (five)] Business Days period (in case of (i)) and upon the expiry of the [7 (seven)] Business

Days period (in case of (ii) and (iii)).

15.12.9. If the Trial Operations are not successfully completed and/or the Concessionaire fails to issue a notice to BSWML on or prior to the Scheduled COD for any Project Facilities, then such failure shall be treated as a Concessionaire Event of Default and the consequences set out at Article 16 shall follow.

15.12.10. If the Concessionaire fails to successfully complete the Trial Operations for the Project Facilities on or prior to the Scheduled COD then such failure will be treated as an BSWML Event of Default, and the consequences set out at Article 24 shall follow.

15.12.11. The Concessionaire will not be entitled to any REUSABLE BI PRODUCTS Payments or any other payment for conducting the Trial Operations, which shall be carried out solely at the cost and risk of the Concessionaire.

15.13 Commercial Operations Date

15.13.1. Within [7 (seven)] Business Days from the date of issuance or deemed issuance of the Trial Operations Completion Certificates for the Project Facilities, BSWML shall issue the COD Certificate with a copy to the State Government, subject to the following conditions having been fulfilled by the Concessionaire:

(a) the Concessionaire having received the Construction Completion Certificate;
(b) the Concessionaire having submitted to BSWML the Scheduled Maintenance Programme for the first-year Post-COD; and
(c) the Reusable bi products Manual having been approved by BSWML;
(d) the Concessionaire having submitted the Project Facilities Reusable bi products Security to BSWML.

15.13.2. If BSWML fails to issue the COD Certificate to the Concessionaire within 7 (seven) Business Days from the date of satisfaction of the conditions set out in Article 15.13.1 above and fails to notify the Concessionaire of any reasons for the failure to issue the COD Certificate, then, the COD Certificate shall be deemed to have been issued to the Concessionaire upon the expiry of the 7 (seven) Business Days period.

15.13.3. The date on which the COD Certificate is issued or deemed to have been issued to the Concessionaire shall be the Commercial Operations Date of the Project Facilities.

15.14 Safety certification prior to Project COD

The Concessionaire shall, not later than [15 (fifteen)] days prior to the likely Project COD, notify BSWML and the Project Engineer of the compliance or Safety Requirements and invite them to observe any or all the Tests that may be specified by the Project Engineer in accordance with Applicable Laws, Applicable Permits and Good Industry Practice to determine that the Project infrastructure is safe for entering into commercial service, and the costs of such Tests shall be shared equally between the Concessionaire and BSWML; provided that in case of failure in any Test requiring repetition thereof, the cost of such second or subsequent Test shall be borne entirely by the Concessionaire.

ARTICLE 16

COLLECTION, TRANSPORTATION & PROCESSING PERIOD

16.1 Commencement and Duration

The period for the Collection, Transportation & Processing of the Project Facilities, other than the Project Facilities used for 1750 TPD Construction & Demolition C&D Waste, shall commence on and from COD and shall continue until the Termination Date (the **"Collection, Transportation and Processing period"**).

16.2 Collection, Transportation & Processing Manual

16.2.1. The Concessionaire shall prepare a detailed Collection, Transportation & Processing Manual for the Project Facilities based on the Proposed Technology and in accordance with the Technical Specifications, the ESHS Documents, Applicable Laws and Applicable Permits. The Collection, Transportation & Processing Manual shall specify the operation procedures (separately for each component of the Project Facilities) and maintenance procedures. In case of any errors or deficiencies in the Technical Specifications, the Collection, Transportation & Processing Manual shall take in account, address or rectify such errors or deficiencies. The Language of the Collection, Transportation & Processing Manual shall be English.

16.2.2. At least 30 (thirty) days prior to the Scheduled Construction Completion Date, the Concessionaire shall submit 4 (four) hard copies and 1 (one) soft copy on a compact disc of the draft Collection, Transportation & Processing Manual to BSWML for its review and approval.

16.2.3. BSWML shall review and provide comments, if any, on the draft Collection, Transportation & Processing Manual to the Concessionaire or notify the Concessionaire of its approval of the draft Collection, Transportation & Processing Manual within 20 (twenty) days from the date of receipt of the draft Collection, Transportation & Processing Manual from the Concessionaire. BSWML may require the Concessionaire to amend or modify the draft Collection, Transportation & Processing Manual if BSWML identifies any deficiencies, inaccuracies or shortcomings in the draft Collection, Transportation & Processing Manual. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Collection, Transportation & Processing Manual from BSWML, then the Concessionaire shall modify the draft Collection, Transportation & Processing Manual to correct any shortcomings, inaccuracies or deficiencies identified by BSWML

and/or address, in writing, BSWML's comments on the draft Collection, Transportation & Processing Manual and submit the revised Collection, Transportation & Processing Manual to BSWML within 10 days of having received BSWML's response, for its approval. The process set out in this Article 16.2.3 shall continue until the Collection, Transportation & Processing Manual is approved by BSWML in accordance with this Article 16.2.3.

16.2.4. The Concessionaire shall revise the Collection, Transportation & Processing Manual as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Article 16.2.3 will apply as is to the approval of the revised manual.

16.2.5. The Concessionaire shall undertake the Collection, Transportation & Processing of the Project Facilities strictly in accordance with the approved Collection, Transportation & Processing Manual. The Concessionaire shall not deviate from or make any amendment to the approved Collection, Transportation & Processing Manual without the prior written approval of BSWML. The Concessionaire shall not commence operation of the Project Facilities prior to approval of the Collection, Transportation & Processing Manual in accordance with Article 16.2.

16.2.6. Notwithstanding any approval of the Collection, Transportation & Processing Manual by BSWML**,** the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Collection, Transportation & Processing Manual. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the Collection, Transportation & Processing Manual and complying with the requirements of Article16.2.

16.2.7. The Concessionaire shall submit a consolidated Collection, Transportation & Processing Manual for the Project Facilities.

16.3 Sub-Contracting

16.3.1. The Concessionaire may enter into Sub-Contracts to perform any part of its Scope of Work during the Collection, Transportation and Processing period, with the prior intimation to BSWML**.**

16.3.2. The Concessionaire shall provide a copy of each proposed Sub-Contract, along with details of the relevant Sub-Contractor, to BSWML for its approval, which should set out the precise Scope of Work to be Sub-Contracted to such Sub-Contractor and should be consistent with the terms of this Agreement.

16.3.3. Within 7 (seven) days of the execution of an amendment to any approved Sub-Contract, the Concessionaire shall submit a copy of such amendment to BSWML for

its records.

16.3.4. If the Concessionaire proposes to novate an approved Sub-Contract and/or replace an approved Sub-Contractor, then such novation or replacement shall be with prior intimation to BSWML.

16.3.5. Notwithstanding the approval of any Sub-Contractor by BSWML**,** the Concessionaire shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Sub-Contractor. No default under any Sub-Contract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Sub-Contractors.

16.4 Concessionaire's rights and obligations

16.4.1. The Concessionaire shall operate and maintain the Project Facilities in a manner that:

(a) is in compliance with the Technical Specifications, Applicable Laws, Applicable Permits and Good Industry Practice;

(b) results in the Project Facilities achieving the KPIs;

(c) ensures that each of the Project Facilities is capable of operating up to its design capacity on a daily basis;

(d) is safe and reliable, subject to normal wear and tear of the Project Facilities;

(e) is in compliance with the technology license agreement(s) executed by the Concessionaire for the technology, processes, know-how and systems used or incorporated into the Project Facilities;

(f) maintains the safety and security of personnel, material and property at the Site(s), in accordance with the approved ESHS Documents, Applicable Laws and Applicable Permits;

(g) ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the ESHS Documents, Applicable Laws and Applicable Permits; and

(h) rectify, cure, remedy all defects, deficiencies, defaults, damage, etc., all of the Project Facilities at its own cost and risk.

16.4.2. The Concessionaire shall provide adequate power backup at the Site(s) (including through installation of DG Sets) to ensure continuous supply of power (even during any interruption(s) in the supply of power from the grid) for the uninterrupted operations of the Project Facilities during the Collection, Transportation and Processing period.

16.4.3. The Concessionaire shall provide all necessary assistance to the Project Engineer, the State Government, and BSWML in undertaking inspection and monitoring of the Collection, Transportation & Processing of the Project Facilities.

16.4.4. The Concessionaire shall reasonably consider and act upon the comments/suggestions made by the Project Engineer and BSWML during any meetings of the Concessionaire with its Sub-Contractors.

16.4.5. The Concessionaire shall provide BSWML and the Project Engineer with reasonable access to the Site(s) during office hours to monitor and inspect the Project Facilities.

16.4.6. The Concessionaire shall arrange for all equipment, machinery, tools and other resources required to undertake the Collection, Transportation & Processing of the Project Facilities and shall take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Sub-Contractors' personnel or equipment, to or from the Site(s), does not interfere with local traffic in the vicinity of the Site(s).

16.4.7. The Concessionaire shall develop and implement a safety and surveillance programme for the Project Facilities and for handling and disposal of the residual inert matter and adopt appropriate measures and safeguards for security of the environment, life, and property at the Site(s).

16.4.8. The Concessionaire shall ensure that none of its employees, consultants, service providers, suppliers, or Sub-Contractors, including any Collection, Transportation & Processing contractor appointed by the Concessionaire, shall engage in any corrupt, fraudulent, collusive, coercive or obstructive practice.

16.5 Rights and obligations of BSWML and the State Government

16.5.1. During the Collection, Transportation and Processing period, BSWML shall:

(a) comply with all its obligations under Applicable Laws (including, specifically the [Act applicable in the State] Act) and BSWML Applicable Permits;

(b) monitor and review the operations and performance of the Project Facilities. This includes the right to access the Project Facilities, and review the records and reports that the Concessionaire is required to maintain, during normal working hours;

(c) review the Scheduled Maintenance Programme and all other plans and documents

16.5.2 BSWML's right to take remedial measures

a) In the event the Concessionaire does not maintain and/or repair the Project Facilities/ Project Assets or any part thereof in conformity with the Maintenance Requirements, maintenance manual or KPI or requirements as set forth in this Agreement including Schedules/ Schedules, and fails to commence remedial works within 15 (fifteen) days of receipt of Post-COD Inspection Report or notice in this behalf from BSWML, BSWML shall, without prejudice to its right under this Agreement including termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, an additional sum equal to [10% (ten percent)] of such cost shall be paid by the Concessionaire to BSWML as damages.

b) BSWML shall have the right, and the Concessionaire hereby expressly grants to BSWML the right, to recover the costs and Damages specified in this Article directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of BSWML under this Article. Any demand from BSWML stating that a specified amount is payable shall be final, binding and conclusive on the Concessionaire and Escrow Bank and Escrow Bank shall pay and Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a demand for such costs and Damages.

16.6 Utilities

16.6.1. The Concessionaire shall apply for and obtain the power connection (at the battery limit of the relevant Site(s)) for the operation of the Project Facilities, in its name, at least 30 (thirty)

days prior to the Scheduled Construction Completion Date. The Concessionaire shall provide all necessary assistance to the Authority in procuring the power connection, including by providing all documents and information necessary to complete the application process.

16.6.2. The Concessionaire shall install and maintain at its cost, all utilities (other than power) necessary for the O&M of the Project Facilities, including water, telephone connections, internet connections, etc. at the Site(s). Specifically, to procure water for the O&M of the Project Facilities, the Concessionaire may dig borewells at the Site(s) after obtaining all Applicable Permits (including any no-objection certificates from the Central Ground Water Authority or the relevant state authority).

16.6.3. The Concessionaire shall not be entitled to any additional costs to comply with its obligations in Article 16.6.

15.6.4. Authority shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the O&M of the Project Facilities.

16.7 Monitoring and Reporting

16.7.1. Online Monitoring and Meters

(a) At the Project Facilities Sites, the Concessionaire shall install and maintain an online monitoring system, in accordance with the Technical Specifications and Applicable Laws (including specifically, the EPA) to monitor the volume, specifications and characteristics of the incoming Solid Waste and ensure that the Project Facilities are capable of operating up to its design capacity on a daily basis. The online monitoring devices should be capable of measuring and analyzing the quantum and characteristics of the Solid Waste at the Processing facility and decentralized units and of the quantum and quality of disposables discharged from the Sites.

(b) Online monitoring system shall maintain a record for equipment‟s historical running information, status, faults, and any other parameters required to judge its conditions. Such monitoring shall be conducted in accordance with Applicable Laws and Good Industry Practices.

(c) The Concessionaire shall record and transmit all data collected from the online monitoring systems and the meter reading of the grade, volume and characteristics of the incoming Solid Waste and the processed disposables. The Concessionaire shall furnish a summary report for the Project Facilities to Authority (with a copy to the Project Engineer) on a daily basis, which shall indicate: (A) the quantum of the Solid Waste received at the relevant Project Facility(ies) and the quantum of the processed disposables including compost from the relevant Project Facility(ies) of the relevant day; and (B) the periods during which the quantum of Solid Waste received at the relevant Project Facility(ies)exceeded its design capacity.

(d) The Concessionaire shall also be required to upload the periodic reports from the online monitoring on the Central Pollution Control Board's website.

(e) The Concessionaire shall maintain the online monitoring systems and meters at its own cost and expense for the entire O&M Period.

(f) At Project Facility (ies), the Concessionaire shall also install meters and gauges at the DG Sets to measure the total number of energy units (in kWh) consumed from the DG Sets in each month of the O&M Period.

(g) [If the Concessionaire sets up a Waste to Energy Plant(s), then the Concessionaire shall install meters at the Waste to Energy Plant(s) to measure the total number of energy units (in kWh) generated from the Waste to Energy Plant(s) in each month of the O&M Period.]

(h) The meters shall be calibrated once every year during the O&M Period in accordance with Good Industry Practices and the meters shall be jointly tested by Authority and the Concessionaire to ensure the accuracy of the meters installed by the Concessionaire.

16.7.2. Records and Reporting Requirements

(a) The Concessionaire shall maintain:

(i) records of the quantum and characteristics of the Solid Waste received at, and the processed disposables discharged from the Project Facilities; and

(ii) books of accounts recording all payments received from Authority and/or the State Government and other revenues derived/collected by it from the Project Facilities or resulting from its use, separately for each of the Project Facility and Site.(b) The Concessionaire shall provide to Authority, 2 (two) copies of its audited financial statements along with a report from its statutory auditors, within 90 (ninety) days of the close of each Financial Year.

(b) For Project Facilities, the Concessionaire shall deliver to Authority, with a copy to the Project Engineer, the following during the O&M Period within the specified timelines:

(i) reports relating to any activity, problem, incident or circumstance that threatens or may threaten public health, safety, the environment or the safety and security of the Project Facilities, and any action taken to mitigate the effect of such incident or problem, as soon as reasonably practicable but no later than 12 (twelve) hours after the occurrence of such event or circumstance;

(ii) Reports on any critical breakdowns or failures in the Project Facilities, within 12 (twelve) hours of such occurrence;

(iii) reports on accidents or other incidents in relation to the O&M personnel or any third party, along with statements on actions taken to minimise recurrence, within 2 (two) days of such occurrence;

(iv) daily reports with the data collected from the monitoring and metering system, the online monitoring system and the tests conducted by the Concessionaire in accordance with Clause 16.9 on the characteristics and volume of Solid Waste treated at the Project Facilities, processed disposables discharged from the Project Facilities, at the end of each day (i.e., on or before [1500 hours] every day);

(iv) monthly progress reports relating to the performance of O&M services (including on compliance with the KPIs, details of disposal or sale, as the case may be, of the processed disposables, and details of any Emergency during the relevant month), on or before the 7th (seventh) day of the following month. The monthly progress report must be certified by the Project Engineer before it is submitted to Authority;

(v) copies of any reports, notices or responses submitted for compliance/noncompliance with Applicable Laws or Applicable Permits, within 2 (two) days of making such submissions to the relevant Government Authority; and

(vi) reports on any material litigation, including any winding-up proceedings or notice to commence winding-up proceedings or material disputes to which the Concessionaire is a party, appointment of a receiver or administrator in relation to the business or assets of the Concessionaire and any adverse orders or judgments passed by any Government Authorities that affects or is likely to affect the performance of the O&M services, as soon as reasonably possible after the occurrence of any such event.

(c) It is clarified that the reports set out in this Clause 16.7 will be separately prepared and furnished for each of the Project Facilities.

(d) It is expressly agreed between the Parties that the [Name of the Financial Institution] shall be permitted to inspect the Site(s) and/or all accounts, records, and other `documents relating to contract performance of the Concessionaire, as well as its Sub Contractors, agents, personnel, consultants, service providers or suppliers, including O&M contractors for the Project and have them audited by auditors appointed by the [Name of the Financial Institution]

16.8 Design Capacity Utilization

16.8.1. During each day of the O&M Period, the Concessionaire shall ensure that Project Facilities can accept and process Solid Waste up to its design capacity.

16.8.2. The Concessionaire shall notify Authority (with a copy to the Project Engineer) as soon as it becomes aware that the quantum of Solid Waste received at the relevant Project Facility is more than its design capacity.

16.8.3. In such circumstances, if the Concessionaire is unable to accept and process the excess Solid Waste (i.e., over and above the design capacity) at the relevant Project Facility, then such failure shall be treated as a Forced Unavailability for which the Concessionaire shall not be liable, subject to the Concessionaire having notified Authority in accordance with Article 16.8.2 above. Authority reserves the right to require the Project Engineer to verify the capacity utilization at any Project Facility, at any time during the O&M Period.

16.9 Maintenance and Repair of the Project Facilities

16.9.1. During the O&M Period, the Concessionaire shall, at its own cost, undertake the maintenance of the Project Facilities and repair any damage to the Project Facilities either by itself, or through an approved Sub-Contractor, such that the Project Facilities shall be:
(a) in good working condition (subject only to wear and tear and Force Majeure) and achieve their full useful economic life in accordance with the Designs and Drawings;
(b) maintained in compliance with the Technical Specifications, O&M Manual, Scheduled Maintenance Programme, Applicable Laws, Applicable Permits, Good Industry Practice and the recommendations of the technology providers;
(c) capable of meeting the KPIs.

16.9.2. For the first year of the O&M Period, the Concessionaire shall submit its scheduled maintenance programme for the Project Facilities, specifying the Scheduled Maintenance periods for the Project Facilities and the impact of such Scheduled Maintenance periods on the Availability of each of the Project Facility (the **"Scheduled Maintenance Programme"**) to the Authority at least 1 (one) month before the Scheduled COD and for every subsequent year of the O&M Period, the Concessionaire shall submit the Scheduled Maintenance Programme, at least 1 (one) month prior to the beginning of the relevant year. The Scheduled Maintenance Programme for the first year will cover the period from the COD until the end of the calendar year in which the COD occurs. It is clarified that the Concessionaire shall submit a consolidated Scheduled Maintenance Programme for the Project Facilities.

16.9.3 Within 15 (fifteen) days of receipt of the Scheduled Maintenance Programme,

Authority shall notify the Concessionaire of its approval of such schedule. If Authority does not accept any one or more of the requested Scheduled Maintenance periods or its impact on the Availability of a Project Facilities, Authority shall advise the Concessionaire within 15 (fifteen) days of the receipt of the Scheduled Maintenance Programme on when any Scheduled Maintenance can be rescheduled or how its impact on the Availability of a Project Facilities may be minimised. The rescheduled time shall be as close as reasonably practicable to the requested time and shall be of equal duration as the requested period. If Authority fails to object to any Scheduled Maintenance within the specified time period or fails to advise the Concessionaire of a substitute time, the Concessionaire may schedule the Scheduled Maintenance for such duration and at such time as initially requested.

(a) Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Article 15.9, Authority may require the Concessionaire to reschedule a Scheduled Maintenance in the Scheduled Maintenance Programme, provided that:

(i) Authority has given the Concessionaire at least 30 (thirty) days‟ prior written notice of such re-scheduling;

(ii) Authority shall not require such Scheduled Maintenance to be rescheduled for a period of shorter or longer duration;

(iii) Authority shall not require that a single Scheduled Maintenance period be split into two or more periods; and

(iv) Authority shall not require that a Scheduled Maintenance be brought forward any earlier than 15 (fifteen) days from the date of such notice without the consent of the Concessionaire.

(b) Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Clause 15.9, the Concessionaire may request a rescheduling of any Scheduled Maintenance upon 60 (sixty) days‟ prior written notice to Authority. Authority shall respond to such request within 10 (ten) days and shall not unreasonably withhold its permission for such re-scheduling.

(c) Within 5 (five) days of any re-scheduling of a Scheduled Maintenance, as may be approved by the Authority, the Concessionaire shall provide to Authority, the amended Scheduled Maintenance Programme, which shall then be the “Scheduled Maintenance Programme”.

(d) During the O&M Period, the Concessionaire shall, at its own cost, replace any component or part of the Project Facilities that is damaged or worn out or in the Concessionaire‟s judgment becomes no longer practicable to repair as a result of normal wear and tear.

e) If at any time during the O&M Period, a Project Facilities is damaged by a Minor Casualty, the Concessionaire shall, with reasonable diligence, proceed to process the claim with insurance providers and at its own cost, repair, replace, and restore the damaged portion of the Project Facilities to the same condition that it was in before the occurrence of such Minor Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.
If at any time during the O&M Period, a Project Facilities is damaged by a Total Casualty, then this Agreement shall be terminable at the option of the Concessionaire. If the Concessionaire elects to terminate the Agreement, then the consequences set out in Article 24 will follow. If, however, the Concessionaire elects not to terminate the Agreement, then the Concessionaire shall repair, replace and restore the damaged Project Facilities to the same condition that it was in before the occurrence of such Total Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.

16.10 Remedial Measures

If after the COD, the Concessionaire ceases to operate Project Facilities for a period of 48 (forty

eight) consecutive hours other than due to a Forced Unavailability, Scheduled Maintenance, or a suspension pursuant to Article21, which is not attributable to the Concessionaire, or a Force Majeure Event, without the prior written consent of Authority, then Authority shall be entitled to step-in and undertake O&M of such Project Facilities until the Concessionaire demonstrates to the satisfaction of Authority that it can and will resume normal operation and maintenance of the Project Facilities. The exercise of Authority‟s rights under this Article 16.10 shall be at the cost, risk and expense of the Concessionaire. The Concessionaire shall not be entitled to receive any O&M Charges for the duration that Authority steps-in to operate and maintain the Project Facilities.

16.11 O&M Personnel

16.11.1 The Concessionaire shall engage (either directly or through an approved Sub-Contractor) an adequate number of suitably skilled and qualified personnel to undertake the O&M of the Project Facilities in accordance with the requirements set out in this Article 16.

16.11.2. The Concessionaire shall be solely responsible for discharging all obligations in connection with the employment of the O&M personnel, including the payment of wages, salaries, Taxes, and retrenchment compensation and providing all amenities and benefits required under applicable laws.

16.11.3. Subject to compliance with the Applicable Laws, the Concessionaire shall have full freedom
to determine its internal human resources (HR) policies, including, the wages, benefits and salary structure of its employees, the conditions of service, the shifts of work, its hire and fire policy (whether for misconduct or other cause), and payment of severance or retrenchment compensation.

16.11.4.Authority is not and shall not be treated as the "principal employer" of or be deemed to have
any contractual or other relationship with the O&M personnel. The Concessionaire shall hold harmless and indemnify Authority against all losses, claims, costs and damages that Authority may suffer due to the Concessionaire‟s or any of its Sub-Contractor‟s failure to comply with Applicable Law

ARTICLE 17
MONITORING AND INSPECTION

17.1 During Pre-COD Period

17.1.1 Monthly Progress Reports

During the Pre-COD Period, the Concessionaire shall, not later than 7 (seven) days after the close of each month, furnish to the Project Engineer, a monthly report bringing out in detail the progress made by the Concessionaire and also organise monthly review meetings with respect to its Scope of Work, including *inter-alia* the Processing facility (including the power plant, if any), Project Facilities and any such information as may be considered essential by the Project Engineer.

17.1.2 Inspection

During the Pre-COD Period, the Project Engineer shall inspect or cause to be inspected the Project Facilities at least [once a month] or at such shorter intervals as may be considered essential by the Project Engineer and make report of such inspection (the **"Pre-COD Inspection Report"**) stating in reasonable detail the delay or deficiencies, if any, with particular reference to the Scope of Work, specifications, Good Industry Practices, and Applicable Laws.

It shall send a copy of such a Report to the Concessionaire within 2 (two) days of such inspection/ observation and upon receipt thereof, the Concessionaire shall rectify and remedy the observations, if any, stated in the Inspection Report. Provided however, such inspection or submission of Inspection Report by the Project Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

17.1.3 Tests

For determining that the Project Facilities conform to the specifications and requirements of this Agreement, the Project Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Project Engineer/BSWML from time to time, in accordance with Good Industry Practice

for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Project Engineer and furnish the results thereof to the Project Engineer. For the avoidance of doubt, the costs to be incurred on any such test undertaken shall be borne solely by the Concessionaire. In the event that results of any tests conducted under this Article 16.1.3 above establish any defects or deficiencies in the works, the Concessionaire shall carry out remedial measures and furnish a report to the Project Engineer on this behalf. For the avoidance of doubt, it is agreed that tests pursuant to this Article 17.1.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Project Engineer forthwith.

17.2 Post-COD period

17.2.1 Monthly Status Reports

During Post-COD Period, the Concessionaire shall, not later than 7 (seven) days after the close of each month, furnish to the Project Engineer a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, the quantity of C&D Waste Collection, Transportation and Processing and shall promptly give such other relevant information as may be required by the Project Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

17.2.2 Inspection

17.2.3 The Project Engineer shall inspect or cause to be inspected the execution of the Project at least [once a month]. It shall make a report of such inspection (the "Post-COD Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with reference to the Maintenance Requirements, maintenance manual, KPIs or requirements as set forth in this Agreement including Schedules/ Schedules, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Post-COD Inspection Report. Such inspection or submission of Post-COD Inspection Report by the Project Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

17.2.4 Remedial measures

(a) The Concessionaire shall repair or rectify the defects or deficiencies, which have impact on the operations/ efficiency of the Project, if any, set forth in the Post-COD Inspection Report and furnish a report in respect thereof to the Project Engineer within 15 (fifteen) days of receiving the Post-COD Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports to the Project Engineer of the repair works [once every week] until such works are completed in conformity with this Agreement.

17.2.5 In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Project Engineer/ BSWML shall be entitled to recover Damages from the Concessionaire at the rate of [0.1% (zero point one percent)] of Performance Security for each day of delay beyond the period specified for rectification of such defect or deficiency by the Project Engineer/BSWML. BSWML's right to take remedial measures

(a) In the event the Concessionaire does not maintain and/or repair the Project Facilities/ Project Assets or any part thereof in conformity with the Maintenance Requirements, maintenance manual or KPI or requirements as set forth in this Agreement including Schedules/ Schedules, and fails to commence remedial works within 15 (fifteen) days of receipt of Post-COD Inspection Report or notice in this behalf from BSWML, BSWML shall, without prejudice to its right under this Agreement including termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, an additional sum equal to [10% (ten percent)] of such cost shall be paid by the Concessionaire to BSWML as damages.

(b) BSWML shall have the right, and the Concessionaire hereby expressly grants to BSWML the right, to recover the costs and Damages specified in this Article directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of BSWML under this Article. Any demand from BSWML stating that a specified amount is payable shall be final, binding and conclusive on the Concessionaire and Escrow Bank and Escrow Bank shall pay and Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a demand for such costs and Damages.

ARTICLE 18
PAYMENTS

18.1. Payment during Concession Period

In consideration of the works and services required to be performed by the Concessionaire for designing, financing, constructing, operating and maintaining the Project Facilities in accordance with this Agreement, the Concessionaire shall invest the capital investment from the financing source that agreed by the concessionaire as per the RFP conditions there shall not be any financial support in any manner by either by BSWML or State government under this Article 18.

The Concessionaire shall be deemed to have satisfied itself regarding the adequacy, accuracy and sufficiency of the funds for the successful completion of the project on their own. The Construction Payments and the O&M Payments are the full responsibility of the Concessionaire for undertaking the Project.

18.1.1. Bid Project Cost

The Parties expressly agree that **during the construction phase of project**, the cost of construction of the Project, as on the Bid Date, which is due and payable by the Authority/ State Government to the Concessionaire, shall be deemed to be Rs. 210.54 crores (the **"Bid Project Cost"**). The Parties further agree that the Bid Project Cost specified hereinabove for payment to the Concessionaire shall be inclusive of cost of decentralized units, cost of construction, interest during construction, working capital, physical contingencies and all other soft costs, expenses and charges for and in respect of construction of the Project.

The Parties expressly agree that **during the O&M phase of project**, the cost of collection, transportation & processing of C&D waste per month; i.e., Approved tipping fee per TPD multiplied with the total TPD C&D collected, transported & processed under the contract for duration of one month shall be deemed as **"Bid Project Cost"**.

Yearly escalation of 5% and WPI is applicable for Bid Project Cost during O&M phase.

For the avoidance of doubt, the Bid Project Cost specified herein represents the amount due and payable by the Authority/ State Government to the Concessionaire and may be less than, equal to, or more than the Estimated Project Cost.

~~18.1.2. Adjusted Bid Project Cost~~ NOT APPLICABLE

(a) The Bid Project Cost specified shall be revised from time to time in accordance with the provisions to reflect the variation in Price Index occurring after the Reference Index Date immediately preceding the Bid Date.

(b) The Bid Project Cost adjusted for variation between the Price Index occurring between the Reference Index Date preceding the Bid Date and the Reference Index Date immediately preceding the Execution Date shall be deemed to be the Bid Project Cost at commencement of construction.

(c) For every month occurring after the Execution Date, BSWML shall compute the variation in Price Index occurring between the Reference Index Date preceding the Bid Date and the Reference Index Date preceding the date of Invoice, and shall express the latter as a multiple of the former (the "**Price Index Multiple**").

(d) All Invoices to be submitted by the Concessionaire to BSWML for and in respect of the Construction Period shall be the product of the relevant proportion of the Bid Project Cost and the Price Index Multiple applicable on the date of Invoice. For the avoidance of doubt and by way of illustration, if the Price Index on the Reference Index Date preceding the Bid Date, say January 31, 2016, is 200 (two hundred); the Invoice is submitted on October 15, 2017; and the Price Index as on September 30, 2017 is 210 (two hundred and ten), then the Price Index Multiple for determination of the amount due in respect of such Invoice shall be 1.05 (one point zero five).

18.1.3. Payment of Bid Project Cost

(a) [45% (forty five per cent)] of the Bid Project Cost, adjusted for the Consumer Price Index multiple, shall be due and payable to the Concessionaire in 5 (five) equal installments of [9% (nine per cent)] each during Construction & Demolition C&D and construction of other Project Facilities in accordance with the provisions of this Agreement.

(b) The remaining Bid Project Cost, adjusted for the Consumer Price Index Multiple, shall be due and payable in [120 (one hundred and twenty)] [monthly] installments commencing from the day of COD in accordance with the Article 17.1.6 (e).

18.1.4. Payment during Construction Period

(a) The State Government or BSWML shall deposit an amount equivalent to the first [2 (two)] Payment Milestones in the Escrow Account in accordance with the Escrow Agreement, prior to the Compliance Date. From the Compliance

Date and during the Construction Period, the State Government and BSWML shall ensure that the Escrow Account is funded with an amount equivalent to the next [2 (two)] Payment Milestones for the Project Facilities.

(b) 10% (ten per cent) of the Bid Project Cost for the Project Facility shall be given to the Concessionaire as a Mobilization Advance in accordance with Article 17.1.4(d), which will be adjusted against the Construction Payments to be paid by the State Government or BSWML to the Concessionaire in 5 (five) installments, in accordance with Article 17.1.4(e). The Construction Payments will be paid to the Concessionaire upon completion of the work corresponding to the Payment Milestones and certification of completion of such Payment Milestones by BSWML.

(c) Adjustment in Construction Payments

(i) The Construction Payments shall be adjusted during the Construction Period to reflect the variation in the Construction Price Index occurring after the Reference Index Date immediately preceding the Bid Due Date.

(ii) All Invoices to be submitted by the Concessionaire to BSWML for any installment of the Construction Payments shall be the product of the relevant percentage of the Bid Project Cost and the Price Index Multiple applicable on the date of the Invoice.

(d) Mobilization Advance

(i) 10% (ten per cent) of the Bid Project Cost shall be payable to the Concessionaire as the Mobilization Advance, within 30 (thirty) days from the Compliance Date, subject to the Concessionaire having submitted a Mobilization Advance Guarantee in accordance with Article 9.

(ii) Subject to Article 17.1.4(d)(iv) below, Project Facilities Mobilization Advance shall be an interest free advance for mobilization and towards execution of the construction works for the Project Facilities.

(iii) The Mobilization Advance shall be deducted in equal installments from the 5 (five) installments of the Construction Payments to be made to the Concessionaire upon progressive completion of the Payment Milestones.

(iv) However, the Concessionaire is liable to pay a simple interest at the rate of

~~8% (eight per cent) on the Mobilization Advance, if the Payment Milestones are not achieved by the Concessionaire in accordance with the agreed Construction Plan and for the reasons attributed to the Concessionaire. The interest shall be payable for the period between the actual Payment Milestone and agreed Payment Milestone. The interest amount shall be deducted along with the Mobilization Advance from the Construction Payments.~~

(e) Milestone of Construction activities

(i) The milestones of the physical completion of the construction activities of the establishment of the 1750 TPD processing plant as per the approved drawing issued to concessionaire based on the concessionaire own design.

(A) 1st(first) mile stone: 10% (ten per cent) physical progress, upon the issuance of the first Milestone Completion Certificate for each location;

(B) 2nd(second) milestone: 30% (thirty per cent) physical progress, upon the issuance of the second Milestone Completion Certificate for each location;

(C) 3rd(third) installment: 50% (fifty per cent) physical progress, upon the issuance of the third Milestone Completion Certificate for each location;

(D) 4th(fourth) Mile stone: 75% (seventy-five per cent) physical progress, upon the issuance of the fourth Milestone Completion Certificate for each location; and

(E) 5th (fifth) Milestone: 100% (hundred per cent) physical progress, upon the issuance of the Construction Completion Certificate.

For the purpose of this Article 17.1.4, physical progress shall mean the stage of construction achieved for the Project Facility (ies) in accordance with the agreed Construction Plan submitted by the Concessionaire.

Provided that in case of change of Scope of Work, the Physical Progress shall be re-calculated to account for the changed scope.

(ii) For the Project Facility (ies), within 7 (seven) days of issuance of the Milestone Completion Certificate for a Payment Milestone, the Concessionaire shall submit an Invoice to BSWML for the amount of the Construction Payment linked to such Payment Milestone along with the KPI Adherence Report. Any Invoice raised by the Concessionaire for the Construction Payments shall be accompanied by a copy of the relevant Milestone Completion Certificate issued by BSWML.

(iii) Within 10 (ten) days of receipt of an Invoice from the Concessionaire pursuant to Article 17.1.4(e)(ii) above, BSWML shall verify and certify the amounts due and payable to the Concessionaire, and either:

(A) approve the Invoice and issue a certificate to the Escrow Bank (the "**Payment Certificate**") (with a copy to the State Government and the Concessionaire), conveying its approval for the release of the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including for payments to be made by the Concessionaire under applicable labour laws); or

(B) issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by BSWML.

The Concessionaire shall submit a revised Invoice to BSWML after rectifying the errors or discrepancies identified by BSWML and this process will be repeated until BSWML approves the Invoice and issues a Payment Certificate to the Escrow Bank with a copy to the State Government and the Concessionaire, conveying its approval for release of the amount specified in the Invoice.

(iv) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 26.

(v) If, within 10 (ten) days from the date of receipt of an Invoice, BSWML does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by BSWML, and the Concessionaire may issue instructions to the Escrow Bank (with a copy to BSWML and the State Government) to release the amounts specified in the Invoice, upon the expiry of the 10 (ten) day period.

(vi) Immediately upon receipt of a Payment Certificate from BSWML or upon receipt of instructions from the Concessionaire in accordance with Clause 17.1.4(e)(vi), the Escrow Bank shall release the amount specified in the Payment Certificate or if no Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.

(vii) Notwithstanding anything to the contrary in this Agreement, BSWML shall have no obligation to issue a Payment Certificate unless:

(A) the Performance Securities remain valid and in effect;

(B) the insurances to be obtained by the Concessionaire in accordance with Article 27 are valid and in effect;

(C) the Concessionaire Applicable Permits for construction of the Project Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;

(D) the Concessionaire has complied with the ESHS Documents in undertaking the construction of the Project Facilities; and

(E) there is no subsisting Concessionaire Event of Default.

(F) the Concessionaire shall be paid the Construction Payments in Rupees. [However, if, in the Financial Proposal, the Selected Bidder specified any percentage of the Bid Project Cost which it would want to receive in a foreign currency during the Construction Period, then the Construction Payments corresponding to such percentage of the Bid Project Cost shall be paid to the Concessionaire in the relevant foreign currency. For the purpose of payment in a foreign currency, the exchange rate shall be [•]. It is clarified that the aggregate Construction Payments due to the Concessionaire shall not exceed [45% (forty five per cent)] of the Bid Project Cost, as quoted by the Selected Bidder in Rupees and adjusted for inflation as per Clause 17.1.4(c), on account of a percentage of the Bid Project Cost being paid to the Concessionaire in foreign currencies][20].

18.1.5. Bonus on early completion

In the event that the Concessionaire shall achieve COD on or more than 30 (thirty) days prior to the Scheduled Completion Date, BSWML shall pay to the Concessionaire a bonus equal to [0.5% (zero point five per cent)] of [60 % (sixty per cent)] of the Bid Project Cost for the first [30 (thirty)] days by which COD shall precede the Scheduled Completion Date and thereafter the said bonus shall be calculated on the pro-rata basis for each day preceding the said [30 (thirty)] days period. The bonus shall be due and payable to the Concessionaire along with the 1st(first) Annuity Payment.

18.1.6. Payments during Construction and Processing Period

(a) The Parties acknowledge and agree that BSWML has paid [45% (forty five)] of the Bid Project Cost as payments during Construction Period pursuant to Clause 17.1.4 of this Agreement. The balance Bid Project Cost of remaining [55% (fifty five per cent)] (the**"Capex Annuity"**), the interest on the reducing balance of [55% (fifty five per cent)] of the Bid Project Cost, the C&D Charges and the Power Charges (the **"C&D Payments"**), shall be due and payable in Rupees during the next [20 (twenty)]years in equal [monthly/quarterly] payments in accordance with this Article17.1.6.

(b) The 1st(first) installment of Annuity Payments shall be due and payable within 15 (fifteen) days of the [30th(thirtieth)/90th (ninetieth)] day of COD and the remaining installments shall be due and payable within 15 (fifteen) days of completion of each of the successive [months/quarters] (the "**Annuity Payment Date**"). For the avoidance of doubt, the last Annuity Payment Date would be adjusted to in such a way that it falls at the end of the Operations Period.

(c) On and from the COD and during the Construction and Processing period, the State Government or BSWML shall deposit the C&D Payments for each Project Facility in the Escrow Account such that the Escrow Account is funded at all times with the Capex Annuity (along with interest), the C&D Charges and the estimated Power Charges for the next [2 (two)] years for the Project Facility.

(d) Adjustment in O&M Charges: NOT APPLICABLE

(i) The O&M Charges shall be adjusted during the Construction and Processing period to reflect the variation in the C&D Price Index occurring after the Reference Index Date immediately preceding the Bid Due Date.

(ii) All Invoices to be submitted by the Concessionaire to BSWML for the [monthly/quarterly] C&D Charges shall be the product of the applicable C&D Charges for the relevant [month/quarter] and the Price Index Multiple applicable on the date of the Invoice.

~~(e) Capex Annuity~~

~~(i) The Capex Annuity shall be payable in [•] equal [monthly/quarterly] installments during the Construction and Processing period.~~

~~(ii) Interest shall be payable on the reducing balance of 60% (sixty per cent) of the Bid Project Cost for the Project Facilities, at the rate of the SBI MCLR plus 3% (three per cent) per annum. Such interest shall be due and payable [monthly/quarterly] along with each installment of the Capex Annuity. The Parties agree that such interest shall be calculated on the basis of the number of days for which the relevant rate of the SBI MCLR was applicable during the period of calculation.~~

~~By way of illustration, assuming that the balance Bid Project Cost to be paid to the Concessionaire on the date of payment of the 1st (first) Capex Annuity installment is INR 50,00,00,000 (Rupees fifty crores), the applicable SBI MCLR for the first 50 (fifty) days is 8% and thereafter it is revised to 7.5% and remains unchanged till the date of payment of the 2nd (second) Capex Annuity, the interest would be calculated as ((50*11%*50)/365)+((50*10.5%*40)/365). For the avoidance of doubt, the interest shall be calculated on simple interest basis and the interest shall not be compounded for the purpose of payment.~~

(f) O&M Charges:

(i) BSWML shall pay to the Concessionaire, every [month/quarter] the amount required by the Concessionaire to operate and maintain the Project Facilities, during the Construction and Processing period (the **"O&M Charges"**).

(ii) The C&D waste management Charges shall be made for every ton of C&D waste collected in the Project Area, transported to the Processing Facility/decentralized units by the Concessionaire and processed at the Processing Facility/decentralized units during the post-COD period. The C&D charges will include, *inter-alia,* Primary Collection operation cost including manpower, cost of fuel, etc., Secondary Collection operation cost including manpower, cost of fuel, etc., depreciation on costs of bins, carts, vehicles and trucks and Waste Processing cost including manpower, electricity, fuel and other consumables.

(iii) The O&M Charges for the first [month] after COD will be calculated on the basis of the C&D Charges quoted by the Selected Bidder in the Financial Proposal for the first month from the COD.

(iv) The O&M Charges will be adjusted for the Price Index Multiple applicable

on the Reference Index Date on an annual basis.

(g) Power Charges: **NOT APPLICABLE**

(i) The Power Charges for the Facilities shall initially be borne by the Concessionaire, which shall be reimbursed by the State Government or BSWML to the Concessionaire, subject to a cap of the Power Charges based on the Guaranteed Energy Consumption.

(ii) The Power Charges for any given [month/quarter] of the Construction and Processing period will be calculated as follows:

(A) For the units of energy consumed from the grid (as evidenced by a copy of the bill issued by the distribution licensee), the Power Charges will be calculated by multiplying the number of units consumed in such [month/quarter] (subject to the Guaranteed Energy Consumption for the energy consumed by the relevant Project Facility) with the Power Unit Rate.

If the Concessionaire procures power from outside to identified locations by BSWML , then, the Power Unit Rate will be the prevalent power unit rate in Construction and Processing of C&D WASTE to identified locations by BSWML or the tariff at which the Concessionaire procures power from outside Construction and Processing of C&D WASTE to identified locations by BSWML, whichever is lower.

(B) If there is any interruption in the supply of power from the grid, and the Concessionaire uses backup power supply from the DG Sets, then,

(I) the Concessionaire's Representative and BSWML shall jointly take readings from the meters installed at the DG Sets to determine the number of units of energy consumed from the DG Sets C&D WASTE of the Project Facilities;

(II) the number of units of energy consumed from the DG Sets (determined as per (I) above) shall be adjusted such that the aggregate of the total number of units consumed from the grid and the total number of units consumed from the DG Sets shall not exceed the Guaranteed Energy Consumption for the Project Facilities (the **"Adjusted DG Set Units"**);

(III) the quantity of diesel consumed to generate the Adjusted DG Set Units in the relevant [month/quarter] shall be calculated by

~~BSWML based on the rated specific fuel consumption of the DG Sets specified by the manufacturers of the DG Sets; and~~

~~(IV) the Power Charges for the Adjusted DG Set Units will be calculated by multiplying the quantity of diesel consumed (determined as per (III) above) with the Fuel Price.~~

~~(C) For each Project Facility, the Concessionaire shall be liable to pay liquidated damages to BSWML for any units of energy consumed beyond the Guaranteed Energy Consumption (whether from the grid or from the DG Sets) for such Project Facilities (the **"Power Consumption Liquidated Damages"**), which will be calculated as follows:~~

~~(I) For excess power consumption up to 5% (five per cent) of the Guaranteed Energy Consumption of the Project Facility:~~
~~Power Consumption Liquidated Damages: (Number of power units consumed in the relevant [month/quarter] – Guaranteed Energy Consumption for such [month/quarter]) * [Power Unit Rate] * 0.25~~

~~(II) For excess power consumption between 5% (five per cent) and 10% (ten per cent) of the Guaranteed Energy Consumption of the Project Facility:~~
~~Power Consumption Liquidated Damages: (Number of power units consumed in the relevant [month/quarter] – Guaranteed Energy Consumption for such [month/quarter]) * [Power Unit Rate] * 0.5~~

~~(III) For excess power consumption above 10% (ten per cent) of the Guaranteed Energy Consumption of the Project Facility:~~
~~Power Consumption Liquidated Damages: (Number of power units consumed in the relevant [month/quarter] – Guaranteed Energy Consumption for such [month/quarter]) * [Power Unit Rate]~~

~~(D) The Power Consumption Liquidated Damages payable by the Concessionaire in any [month/quarter] of the Construction and Processing period will be deducted from the O&M Charges for the Project Facilities payable to the Concessionaire for such~~

~~[month/quarter]. If the Power Consumption Liquidated Damages for a [month/quarter] exceed the C&D Charges for the Project Facilities for such [month/quarter], then the excess amounts shall, at the discretion of BSWML, either be adjusted against the C&D Charges for the Project Facilities for the subsequent [month/quarter] or recovered from the C&D Security.~~

(h) The O&M Payments shall be paid by the State Government or BSWML to the Concessionaire on a [monthly] basis. For each of the Project Facilities, the Concessionaire shall submit an Invoice to BSWML for each [month/quarter] on or before the 7th (seventh) day of the [month], which should set out: (i) the Capex Annuity due to the Concessionaire in such [month], along with interest; (ii) the C&D Charges due to the Concessionaire in such [month]; and (iii) ~~the Power Charges incurred by the Concessionaire during such [month/quarter] for power drawn from the grid or the DG Sets, subject to the cap of the Power Charges based on the Guaranteed Energy Consumption for the Project Facilities.~~ Any Invoice raised by the Concessionaire for C&D Payments shall be accompanied with a copy of the: (A) KPI adherence report for [the month], duly certified by the Project Engineer; (B) copy of the bill(s) issued by the state distribution utility for the Power Charges, and if relevant, copy of the joint meter reading for consumption of power from the DG Sets; and (C) daily weights sheets of the electronic weighbridge installed at the entrance of the Processing Facilities Site/decentralized units as prescribed in **Schedule 16**, duly verified and approved by the Project Engineer.

If the Invoice is not accompanied with the supporting documents specified at (A), (B) and (C)above, BSWML shall not be required to process such Invoice.

(i) Within 10 (ten) days of receipt of an Invoice from the, BSWML shall verify and certify the amounts due and payable to the Concessionaire, and either:

(i) approve the Invoice and issue a Payment Certificate to the Escrow Bank with a copy to the State Government and the Concessionaire, conveying its approval for the release of the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including any statutory dues); or

(ii) issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by BSWML.

The Concessionaire shall submit a revised Invoice to BSWML after rectifying the errors or discrepancies identified by BSWML and this process will be repeated until BSWML approves the Invoice and issues a certificate to the Escrow Bank, with a copy to the State Government and the Concessionaire, conveying its approval for release of the amount specified in the Invoice.

(j) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 27.

(k) If, within 10 (ten) days from the date of receipt of an Invoice, BSWML does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by BSWML, and the Concessionaire may issue instructions to the Escrow Bank with a copy to BSWML and the State Government, to release the amounts specified in the Invoice, upon the expiry of the 10 (ten) day period.

(l) Immediately upon receipt of a Payment Certificate or upon receipt of instructions from the Concessionaire the Escrow Bank shall release the amount specified in the Payment Certificate or if no Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.

(m) Notwithstanding anything to the contrary in this Agreement, BSWML shall have no obligation to issue a Payment Certificate unless:

(i) the C&D Securities remain valid and in effect;

(ii) the insurances to be obtained by the Concessionaire in accordance with Article 28

are valid and in effect;

(iii) the Concessionaire Applicable Permits for C&D of the Project Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;

(iv) the Concessionaire has complied with the ESHS Documents in undertaking the C&D of the Facilities; and

(v) there is no subsisting Concessionaire Event of Default.

(n) The C&D Payments shall be varied each year in the month of April (FY) in proportion to change in Consumer Price Index, issued by Ministry of Statistics and Program Implementation, Government of India.

18.2. Escrow Account

(a) Prior to the COD Date, the Concessionaire, the State Government, BSWML and the Escrow Bank shall enter into the Escrow Agreement and the Concessionaire shall open the Escrow Account with the Escrow Bank in accordance with the Escrow Agreement, which shall be operational until the expiry of the Concession Period. The Escrow Agreement shall set out the terms of appointment of the Escrow Bank, and Concessionaire obligation to deposit the Monthly payment of royalty and revenue sharing in accordance with this agreement with the Escrow Bank and terms of withdrawal of amounts from the Escrow Account by authorizing the client to withdraw the royalty and and revenue sharing amount on monthly basis.

(b) Minimum Escrow Balance

At all times, to maintain the minimum balance in the Escrow Account (the **"Minimum Escrow Balance"**):

(i) the Concessionaire shall deposit an amount equivalent to the first [12 (twelve] months royalty and 12 (twelve) months Revenue sharing amount that the Escrow Account is funded; and

(ii) on and from the COD until Termination Date, concessionaire shall deposit the royalty and revenue sharing in the Escrow Account on monthly basis such that the Escrow Account is funded at all times,

(c) BSWML shall be entitled to withdraw amounts from the Escrow Account in accordance with the provisions of this Agreement and the Escrow Agreement.

18.3. Taxes and Royalties

(a) The Construction Payments and the O&M Payments are inclusive of all Taxes and the concessionaire is fully responsible for such taxes, levies, cess or GST as applicable.

(b) the Authority may deduct from the Construction Payments, the O&M Payments and any other amounts due to the Concessionaire, any income tax or withholding tax that is required to be deducted at source.

(c) The Concessionaire shall be responsible for payment of all applicable Taxes, including all procedural compliances related to the payment of Taxes pursuant to this agreement, and shall be solely responsible for any proceedings initiated by any Government Authority, in respect of any non-payment or short-payment of Taxes.

(d) The Concessionaire shall be responsible for payment of all applicable royalties on any fine and coarse aggregate, core sand, fine sand, grit and any other minerals extracted and/or used by the Concessionaire or any Sub-Contractor during the Construction Period and furnish proof of payment of such royalties to the Authority along with the Invoices for the Construction Payments.

(e) Upon a request from the Concessionaire, the State Government and the Authority will provide all relevant certificates and information to enable the Concessionaire to obtain any Tax exemptions available in relation to the Project. It is clarified that the Authority shall not be responsible in any manner for ensuring that any applicable Tax exemptions are available to the Concessionaire.

(f) The Concessionaire shall indemnify the State Government and the Authority from and against any cost or liability that may arise due to the Concessionaire's failure to pay all applicable Taxes, in connection with the Project.

(g) Any Taxes payable in relation to the Sites shall be borne by the Authority

~~18.4. Default Interest:~~ NOT APPLICABLE

~~Upon any Party's failure to make a payment due and payable by it on the due date for such payment, the defaulting Party shall be liable to pay default interest on all such outstanding amounts at the prevailing SBI MCLR + 3% (three per cent) per annum or part thereof. This is without prejudice to any Party"s right to terminate this Agreement in accordance with Article 23 or any other right or remedy available to it under this Agreement or Applicable Laws.~~

18.5. Disputed Amounts

(a) The Parties shall, within [10 (ten)] days of receiving the amount due and payable

to it, shall notify the other Party of the disputed amounts along with details thereof (the **"Disputed Amounts"**). Within [7 (seven)] days of receiving such notice, the defending Party shall present any information or evidence as may be reasonably required for determining that such Disputed Amounts are not payable. The Parties may, if necessary, meet a representative of the other Party for resolving the dispute and in the event that the dispute is not resolved the Dispute Resolution Procedure in accordance with Article 26 shall apply.

(b) If any amount is payable by either Party upon determination of a dispute regarding any Disputed Amount such amount shall be deemed to be payable on the date when it first became due and interest for the period of delay shall be due and payable at the rate specified in Article17.8.

18.6. Set-off

(a) The Concessionaire shall not be entitled to retain or set-off any amount due to the State Government or BSWML by it, but the State Government or BSWML may retain or set-off any amount owed to it by the Concessionaire under this Agreement which has fallen due and payable against any amount due to the Concessionaire under this Agreement.

(b) The State Government or BSWML shall notify the Concessionaire at the time it exercises its right to set-off and shall provide the Concessionaire its reasons for exercising such right to set-off.

18.7. ~~Power Tariff:~~ NOT APPLICABLE

~~Payment shall be made by Karnataka State Electricity Board (SEB) or any other power utility company of Government of Karnataka on a tariff approved by Karnataka State Electricity Regulatory Commission (SERC) or revised tariff from time to time, for the number of units generated and made available at by the Waste to Energy Plant as per the Power Purchase Agreement (the **"PPA"**) signed between Concessionaire and SEB.]~~

ARTICLE 19

KEY PERFORMANCE INDICATORS

(a) Availability

The Concessionaire shall ensure that the Availability of the machinery and facilities for establishment of the 1750 TPD C&D WASTE treatment plant to generate Reusable by products on every day during the Period of Construction and O&M period shall be [100% (one hundred per cent)] (the "**Guaranteed Availability**").

(b) Operation

(i) The Concessionaire shall at all times procure that, save and except any determined damage caused by theft, arson or vandalism:

(A) there are adequate arrangements for machinery and facilities to generate Reusable by products as per Specifications and Standards;

(B) all machinery, equipment and facilities are operational, function efficiently, and their availability is no less than [98% (ninety-eight per cent)] in a month;

(C) the machinery and facilities at the 1000 TPD & 500 TPD C&D Waste treatment plant are maintained in accordance with Maintenance Requirements;

(c) Punctuality and duration of work

(i) The Concessionaire agrees that the Punctuality as to the duration of work at the 1750 TPD C&D Waste treatment plant shall be measured on a monthly basis in terms of the percentage of days with minimum [8 (eight)] hours of operation in three shifts to the total number of working days ("**Duration Punctuality**").

(ii) The Concessionaire agrees that the Duration Punctuality shall be equal to or more than [80% (eighty percent)] respectively.

(d) Safety of Operations

(i) The Parties agree that the Safety of operation of the work of 500 TPD & 1000 TPD C&D WASTE treatment plant to generate Reusable by products shall be measured in terms of inverse of number of accidents per [1,00,000 MT (One Lakh Metric Tonnes)] (the "**General Safety**") and the number of fatalities per [10,00,000 MT (Ten Lakh Metric Tonnes)] (the "**Severe Safety**"), respectively. The General Safety and Severe Safety shall be calculated in terms of total quantum of C&D WASTE processed divided by number of accidents multiplied by [1,00,000 (One Lakh)] and total quantum of C&D WASTE processed divided by number of fatalities multiplied by [10,00,000 (Ten Lakh)], respectively.

(ii) The Concessionaire agrees that the General Safety and the Severe Safety, as the case may be, determined in accordance with Article 19.1.1(d)(i) shall be equal to or more than [1 (one)].

19.1 Collection and Transportation:

(e) Availability

The Concessionaire shall ensure that the Availability of the collection and transportation vehicles on every day during the O&M period shall be 100% (one hundred per cent) (the "**Guaranteed Availability**").

(f) Collection Coverage

Household level coverage of C&D management services through door-to-door collection of waste (the "**Collection Coverage**") shall be the percentage of households and establishments that are covered by a daily doorstep collection system, measured on a monthly basis. The Collection Coverage shall be no less than [100% (hundred per cent)] in a month.

(g) Reliability

(i) The Parties agree that the average reliability of the collection and

transportation vehicles shall be measured on a monthly basis in terms of the number of Breakdowns per [100 (one hundred)] kilometres travelled each by all collection vehicles and all transportation vehicles, separately (the "**Reliability**"). For this purpose, Breakdown shall mean mechanical failure of a vehicle that prevents it from being operational or impedes the operation so much that it is impossible or dangerous to operate

(ii) The Reliability hereunder shall be equal to the quotient of the cumulative distance travelled by all collection vehicles and all transportation vehicles, separately, divided by the aggregate number of Breakdown of all such collection vehicles and all such transportation vehicles multiplied by [100 (one hundred)].

(iii) The Concessionaire agrees that the Reliability for the collection vehicles and transportation vehicles each in accordance with Article 19.1.2(d) shall be equal to or more than [1 (one)].

(iv) The Reliability requirement shall be separately achieved for collection vehicles and the transportation vehicles.

(h) Operation

(i) The Concessionaire shall at all times procure that, save and except any determined damage caused by theft, arson or vandalism:

(A) there are adequate arrangements for collection and transportation of C&D in segregated form as per Specifications and Standards;

(B) the collection and transportation vehicles are maintained in accordance with Maintenance Requirements;

(C) the collection and transportation vehicles are operational, clean, and hygienic, color coded;

(D) the Waste Collection Information Systems in the Project Area function
efficiently;

(E) The Waste collection and transportation vehicles and machinery and facilities for construction & Demolition C&D and processing of fresh waste function efficiently, and their availability is no less than [100% (hundred per cent)] in a month.

(i) Punctuality

(i) Punctuality shall be measured on a monthly basis in terms of the

percentage of on-time start of trips of the collection vehicles to the total number of trips operated on a daily basis ("**Start Punctuality**"). The total number of trips starting/arriving late during the month will be recorded and subtracted from the number of trips operated to arrive at the on-time trips operated figures separately in each case.

(ii) The Concessionaire agrees that the Punctuality for arrival at the respective destination shall be measured on a monthly basis in terms of the percentage of trips with on-time arrival at destination to the total number of trips operated on a daily basis ("**Arrival Punctuality**").

(iii) The Parties agree that the Concessionaire may exercise a relaxation equivalent to [5 (five)] minutes, for start of the schedule of the collection vehicles, and [10% (ten percent)] of the subsequent scheduled trip time (subject to a maximum of [15 (fifteen) minutes]) for start of subsequent schedules and arrival of trips.

(iv) Subject to the provisions of Article 19.1.2(f)(i), the Concessionaire agrees that the Start Punctuality determined in accordance with Article 19.1.2(f)(i) shall be equal to or more than [90% (ninety percent)] and the Arrival Punctuality shall be equal to or more than [80% (eighty percent)] respectively.

(j) Frequency of collection vehicles

(i) The frequency of operation of collection vehicles shall be measured on a monthly basis in terms of percentage of the cumulative trips travelled by all collection vehicles to the aggregate number of scheduled trips ("**Trip Frequency**") and a percentage of the cumulative kilometres of collection vehicles operated to the aggregate scheduled kilometres of collection vehicles ("**Collection Vehicles Kms Frequency**"), respectively.

(ii) The Concessionaire agrees that the Trip Frequency and the Collection Vehicles Kms Frequency, as the case may be, determined in accordance with Article 19.1.2(g) shall be equal to or more than [94% (ninety four percent)].

(iii) The collection vehicles shall be operated continuously such that the first collection vehicle in each direction shall depart no later than [0800 hours] and the last collection vehicle shall reach the secondary waste site

or processing facility not later than [1300 hours] at the frequency specified in the Deployment Plan of collection vehicles and this Agreement; provided that on [Sunday/ any one day of the week] the collection services may not operate.

(iv) The collection vehicles in each direction shall be operated such that the [each household] of the Project Area is covered once a day for [6 (six)] days of the week within the time range allotted to each household as per the Waste collection information system of the Project Area;

(v) The average duration of stops at the designated points as per the Deployment Plan shall not be more than [95 (ninty-five)] minutes each, save and except Breakdown of the vehicle or event of Force Majeure.

(k) Safety of Operations

(i) The Parties agree that the Safety of collection vehicles shall be measured in terms of inverse of number of accidents per [1,000 Kms (One Thousand kilometres)] (the "**General Safety**") and the number of fatalities per [10,000 Kms (Ten Thousand kilometres)] (the "**Severe Safety**"), respectively. The General Safety and Severe Safety shall be calculated in terms of cumulative Collection Vehicles Kms operated divided by number of accidents multiplied by [1,000 (One Thousand)] and cumulative Collection Vehicles Kms operated divided by number of fatalities multiplied by [10,000 (Ten Thousand)], respectively.

(ii) The Concessionaire agrees that the General Safety and the Severe Safety, as the case may be, determined in accordance with Article 19.1.2(h) shall be equal to or more than [1 (one)].

19.2 Facilities at Project site (1750 TPD C&D WASTE treatment plant)

(l) Availability

The Concessionaire shall ensure that the Availability of the Project Facilities at the 1750 TPD C&D WASTE treatment plant Site and decentralized units on every day during the Post-COD period shall be [100% (one hundred per cent)] (the "**Guaranteed Availability**").

(m) Operation

(i) The Concessionaire shall at all times procure that, save and except any determined damage caused by theft, arson or vandalism:

(A) there are adequate arrangements of Project Facilities as per Specifications and Standards;

(B) all machinery, equipment and facilities are operational, function efficiently, and their availability is no less than [98% (ninety-eight per cent)] in a month;

(C) the Project Facilities are maintained in accordance with Maintenance Requirements;

(n) Punctuality and duration of work

(i) The Concessionaire agrees that the Punctuality as to the duration of work of the Project Facilities shall be measured on a monthly basis in terms of the percentage of days with minimum [8 (eight)] hours of operation in three shifts in 24 hours to the total number of working days ("**Duration Punctuality**").

(ii) The Parties agree that the Concessionaire may exercise a relaxation equivalent to [2 (two)] hours, for the start of the schedule of the C&D work, for reasons attributable to rains, Force Majeure, [or any special circumstance].

(iii) The Concessionaire agrees that the Duration Punctuality shall be equal to or more than [80% (eighty percent)] respectively.

(o) Safety of Operations

(i) The Parties agree that the Safety of operation of the Project Facilities shall be measured in terms of inverse of number of accidents per [1,00,000 MT (One Lakh Metric Tonnes)] (the "**General Safety**") and the number of fatalities per [10,00,000 MT (Ten Lakh Metric Tonnes)] (the "**Severe Safety**"), respectively. The General Safety and Severe Safety shall be calculated in terms of total quantum of C&D WASTE divided by number of accidents multiplied by [1,00,000 (One Lakh)] and total quantum of

C&D cleared divided by number of fatalities multiplied by [10,00,000 (Ten Lakh)], respectively.

(ii) The Concessionaire agrees that the General Safety and the Severe Safety, as the case may be, determined in accordance with Article 19.1.1(d)(i) shall be equal to or more than [1 (one)].

19.3 Miscellaneous

(a) Extent of recovery of waste collected

The quantum of waste collected, which is either recycled or processed shall be expressed in terms of percentage of waste collected (the "**Extent of Recovery**"). The Extent of Recovery shall be annually increased by the Concessionaire up to [95% (ninety-five per cent)] or above, with the minimum recovery not being less than [70% (seventy per cent)] during any year of operation. All rights and interest in the [residual inert waste, recyclables, fertilizers etc.], shall vest with the Concessionaire at all times during the Construction and Processing period, unless transferred by the Concessionaire to a third party buyer/off-taker in accordance with this Agreement.

(b) Efficiency in redressal of customer complaint

The total number of Project related complaints redressed within 24 (twenty four) hours of the receipt of complaint, as a percentage of the total number of Project related complaints received in the given time period (the "**Efficiency in Redressal of Customer Complaint**") shall be increased by the Concessionaire annual efficiency up to 100% (one hundred per cent).

(c) Quantum of inert/ residual waste undisposed

The Concessionaire shall make reasonable endeavours to ensure sale of most of the recovered waste products, materials, etc., so as to limit the quantum of waste which remains undisposed to maximum of [7% (seven per cent)] in a [year]. The quantum of undisposed waste shall be calculated as the difference of total quantum of waste collected and the waste recycled/processed and/or the recycled/processed waste which could not be sold.

By way of illustration, assuming that the total quantum of waste collected by the Concessionaire in a year is 1000 (one thousand) tons, the Concessionaire, in compliance with Article 19.1.4 (a), would have recycle/process at least 90 (nine hundred) tons. The remaining 100 (hundred hundred) tons would constitute the undisposed waste. If 100 (one hundred) tons out of the 900 (nine hundred) tons of processed waste are not sold by the Concessionaire, the 100 (one hundred) tons would also constitute of undisposed waste. Hence, the total quantum of undisposed waste for the year would be equal to 200 (two hundred) tons which exceeds the limit of 7% (seven percent) on disposed waste. Hence, the Concessionaire may be liable to pay Performance Liquidated Damages.

(d) Certification

(i) The Concessionaire shall, prior to 1st (first) Anniversary of the COD, achieve and thereafter maintain throughout the Concession Period, [ISO standards] certification or a substitute thereof for the Project Facilities certified copies thereof to BSWML, with a copy to the State Government, forthwith.

(ii) In the event of default in obtaining the certification specified in Article 19.1.4(c), the Concessionaire shall, within [15 (fifteen)] days thereof, submit to BSWML, with a copy to the State Government, an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certification for the Project Facilities.

(iii) If the period of default in obtaining the ISO certification under this Article shall exceed a continuous period of [15 (fifteen)] months, the Concessionaire shall pay Damages to BSWML in an amount equal to [5% (five per cent)] of the Performance Security.

(e) Monthly Report

The Concessionaire shall, no later than [7 (seven)] days after the end of each month, furnish to BSWML, with a copy to the State Government, a report stating the KPI achievement of the Project Facility as measured on a daily basis. The Concessionaire shall promptly give such other relevant information as may be required by BSWML/State Government.

19.4 Availability of Project Facilities

18.4.1. The 'Availability' of each Project Facilities will be determined as a ratio of the

number of hours in a day during which such Project Facility was available to carry out operations up to its design capacity, to the total number of hours in a day, and the term 'Available' shall be construed accordingly.

18.4.2. In computing the Availability of each Project Facilities, the Concessionaire agrees that the Project Facilities will be deemed to be Available at all times, other than during the period of:

(a) an Unscheduled Outage affecting such Project Facility;
(b) a Power Outage affecting such Project Facility;
(c) suspension of the O&M services for such Project Facility, for reasons attributable to the Concessionaire; or
(d) an Emergency affecting such Project Facility, attributable to the Concessionaire, during which the Project Facility will be deemed to be not Available.

18.4.3. Notwithstanding anything to the contrary contained in this Agreement, during the period of a Forced Unavailability or a Force Majeure, the Project Facility affected by such Forced Unavailability or a Force Majeure will be deemed to be Available.

18.4.4. If the Availability for a Project Facility on any given day is less than the Guaranteed Availability, BSWML shall issue a notice to the Concessionaire requiring the Concessionaire to cure the default causing the reduction in Availability in [3 (three)] days. Any failure to cure the default and achieve the Guaranteed Availability within [3 (three)] days of receipt of the notice from BSWML shall constitute a Concessionaire Event of Default. BSWML may claim Availability Liquidated Damages would be available till

the default is cured or the Agreement is terminated.

18.5. Damages for failure to achieve Key Performance Indicators

18.5.1. Availability Liquidated Damages

(a) If the Availability on any given day in a [month/quarter] is less than the Guaranteed Availability then the Concessionaire shall pay the liquidated damages (the **"Availability Liquidated Damages"**) equal to [0.1% (zero point one per cent)] of the C&D Security or Performance Security (in case of Availability Liquidity Damages for 500 TPD C&D WASTE treatment plant) for each such day.
(b) The aggregate Availability Liquidated Damages payable by the Concessionaire

in any [month/quarter] of the Construction and Processing period will be deducted from the security deposit made in ESCROW due to the Concessionaire for such [month/quarter]. If the Availability Liquidated Damages for a [month/quarter] exceed the O&M Payments for such [month/quarter], then the excess amounts shall, at the discretion of BSWML or the State Government, either be adjusted against the security deposits available with BSWML for the subsequent [month/quarter] or recovered from the C&D Securities.

18.5.2. Performance Liquidated Damages

(a) If the compliance of KPIs (other than Availability of Project Facilities) on any given day(s) in a [month/quarter] is less than the benchmarks then the Concessionaire shall pay the liquidated damages (the **"Performance Liquidated Damages"**) equal to [0.1% (zero point one percent)] of the C&D Security for each such day.

(i) Based on the KPI Adherence Report, if the Project Facility (ies) does not comply with the KPIs, then the process set out below shall follow:

(A) In the first instance of non-compliance (the **"First Breach"**), BSWML shall issue a notice to the Concessionaire on the first day of such non-compliance (the "**First Breach Notice"**) requiring the Concessionaire to cure the First Breach within [20 (twenty)] days from the date of the First Breach Notice. If the First Breach is cured within [2 (two)] days of the First Breach Notice, then the Concessionaire shall not be liable to pay any Performance Liquidated Damages. If, however, the First Breach continues beyond [2 (two)] days of the First Breach Notice, then, the Concessionaire shall be liable to pay the Performance Liquidated Damages as pre-decided by the Parties, from the [3rd (third)] day of the First Breach.

(B) If: (I) the First Breach continues for [20 (twenty)] days from the date of the First Breach Notice; or (II) another instance of non-compliance occurs within [6 (six)] months of the First Breach, then such breach shall constitute the **Second Breach**. Upon occurrence of the Second Breach, BSWML shall issue a notice to the Concessionaire on the first day of the Second Breach (the "**Second Breach Notice"**) requiring the

Concessionaire to cure the Second Breach within [20 (twenty)] days from the date of the Second Breach Notice. If the Second Breach continues beyond [2 (two)] days of the Second Breach Notice, then, the Concessionaire shall be liable to pay twice the

amount of the Performance Liquidated Damages, as pre-decided by the Parties, from the [1st(first)] day of the Second Breach. In case of (I) above, it is clarified that the Concessionaire will be liable to pay Performance Liquidated Damages at the rate specified for the First Breach, for the first [2 (two)] days of a continuing breach from the date of the Second Breach Notice and twice the specified Performance Liquidated Damages from the [3rd(third)] day of a continuing Second Breach.

(C) If: (I) the Second Breach continues for [20 (twenty)] days from the date of the Second Breach Notice; or (II) another instance of non-compliance occurs within [6 (six)] months of the Second Breach, then such breach shall constitute the **Third Breach**. Upon occurrence of the Third Breach, BSWML shall issue a notice to the Concessionaire on the first day of the Third Breach (the "**Third Breach Notice"**) requiring the Concessionaire to cure the Third Breach within [20 (twenty)] days from the date of the Third Breach Notice. If the Third Breach continues beyond [2 (two)] days of the Third Breach Notice, then: (X) the Concessionaire shall be liable to pay thrice the amount of the Performance Liquidated Damages applicable to the First Breach, from the [1st (first)] day of the Third Breach; and (Y) the Capex Annuity for the relevant [month(s)/quarter(s)] will be reduced by an amount equal to the Capex Annuity for the relevant [quarter/90 (ninety)] days for each day that the Third Breach continues beyond the [1st (first)] day of the Third Breach. In case of (I) above, it is clarified that the Concessionaire will be liable to pay twice the Performance Liquidated Damages specified applicable to the First Breach, for the first [2 (two)] days of a continuing breach from the date of the Third Breach Notice and thrice the specified Performance Liquidated Damages from the [3rd (third)] day of the Third Breach, in addition to the reduction in the Capex Annuity.

(D) If: (I) the Third Breach is not cured within [20 (twenty)] days from the Third Breach Notice; or (II) a failure to comply with the KPIs results in occurrence of a Third Breach more than 3 (three) times in a continuous [12 (twelve)] month period, it will be treated as a Concessionaire Event of Default and the consequences set out at Article 23 shall apply.

(E) The Parties acknowledge that the Performance Liquidated Damages

(including any escalation contemplated in this Article 19.3.2) are a genuine pre-estimation of and reasonable compensation for the environmental damage that may be caused by the Concessionaire's continuing failure to comply with the KPIs, and not as penalty. The payment of Performance Liquidated Damages will not absolve the Concessionaire from any other liability under Applicable Law, for causing any environmental pollution or health hazard due to its failure to

comply with the Discharge Standards and/or Applicable Law.[23]

(b) The Performance Liquidated Damages payable by the Concessionaire in any [month/quarter] of the Construction and Processing period will be deducted from the security deposit available with BSWML for such [month]. If the Performance Liquidated Damages for a [month] exceed the security deposits available with BSWML for such [month], then the excess amounts shall, at the discretion of BSWML or the State Government, which shall encash the BG available with BSWML.

(c) Within [7 (seven)] days from the end of each month, the Concessionaire shall be required to provide the monthly progress report for each of the Project Facilities (prepared in accordance with Article 15.7.2(c)(v)) on compliance of such Project Facilities with the KPIs and the reasons for such failure, if any. The Project Engineer shall be required to certify each such monthly report before it is provided to BSWML and the State Government. Such certified report on compliance with KPIs shall be referred to as **the KPI Adherence Report** and shall form the basis for C&D Payments being made to the Concessionaire during the Construction and Processing period.

18.5.3. Notwithstanding anything to the contrary contained herein, in the event in any [month/quarter] the aggregate of Availability Liquidated Damages and Performance Liquidated Damages levied by BSWML on account of non-performance exceeds as per clause 15.11 mentioned above, then the same shall be construed as Concessionaire Event of Default, which shall make this Agreement liable for termination.

18.6. Incentive for exceeding to achieve Key Performance Indicators: NOT APPLICABLE

~~The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article and for repeated increase in performance during a [month/quarter], as may be determined by BSWML for reasons to be recorded in writing based on report of the Project Engineer [and~~

~~inspections by BSWML], it shall pay incentive equal to [0.05% (zero point zero five per cent)] of The C&D Security for achievement in any such KPI.~~

ARTICLE 20

ESCROW ACCOUNT

20.1 Escrow Account

20.1.1 BSWML and Concessionaire shall, prior to the Compliance Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with the terms and conditions of this Agreement and the Escrow Agreement;

20.1.2 The nature and scope of the Escrow Account as fully described in the Agreement to be entered into amongst the Concessionaire, BSWML, the Escrow Bank and the Senior Lenders (if any) through the Lenders" Representative, shall be substantially in the form set forth in **Schedule 17** (the "**Escrow Agreement**")

20.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

(a) all funds constituting the financial package disbursed by Lenders in terms of the Financing Agreements;

(b) proceeds of any rentals, deposits, capital receipts or insurance claims; and;

(c) All payments by concessionaire required to be paid to BSWML towards Royalty and revenue sharing shall deposit in the Escrow account.

Concessionaire shall at all times and in any month of the Concession Period, ensure that in the Reserve Sub-Account ("**Reserve Fund**") under the Escrow Account, an amount equivalent to next [90 (ninety] days payable to BSWML, in accordance with terms hereof, is deposited and maintained.

20.3 Withdrawals during Concession Period

20.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions by way of an Escrow Agreement, to the Escrow Bank

instructing, *inter-alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out there from in the month when due:

(a) All taxes due and payable by the Concessionaire for and in respect of the Project;
(b) Any amounts due and payable to BSWML/State Government;
(c) Monthly proportionate provision of Debt Service due in a Financial Year;
(d) Monthly proportionate provision of Debt Service payments due in a Financial Year in respect of Subordinated Debt;
(e) Any reserve requirements set forth in the Financing Agreements; and
(f) Balance, if any, in accordance with the instructions of the Concessionaire.

20.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Article 20.3.1 above, except with the prior written approval of the BSWML/State Government.

20.3.3 BSWML/State Government shall have the right, and the Concessionaire hereby expressly grants to BSWML/State Government the right, to recover the costs and Damages directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of BSWML/State Government. Any demand from BSWML/State Government stating that a specified amount is payable shall be final, binding and conclusive on the Concessionaire and Escrow Bank and Escrow Bank shall pay and Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a demand for such costs and Damages.

20.4 Withdrawals upon Termination

20.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

(a) All taxes due and payable by the Concessionaire for and in respect of the Project;
(b) Percentage of Debt Due excluding Subordinated Debt if required to be as per the terms of this Agreement;
(c) Outstanding payments due to BSWML/State Government;
(d) All payments and Damages certified by BSWML State Government as due and payable to it by the Concessionaire;
(e) Retention and payments relating to the liability for defects and deficiencies
(f) Outstanding Debt Service including the balance of Debt Due;
(g) Outstanding Subordinated Debt;

(h) Incurred or accrued C&D Expenses;

(i) Any other payments required to be made under this Agreement; and

(j) Balance, if any, in accordance with the instructions of the Concessionaire

Provided that no appropriations shall be made under Sub-Article (j) of this Article 19.4.1 until a vesting certificate has been issued by BSWML/State Government.

20.4.2 The provisions of this Article 20 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 20.4.1 have been fully discharged.

ARTICLE 21

FORCE MAJEURE

21.1 Force Majeure Events

21.1.1. A **Force Majeure Event** means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Agreement, which is/are:

(a) beyond the reasonable control of the Affected Party;
(b) such that the Affected Party is unable to overcome or prevent despite exercise of due care and diligence;
(c) which does/do not result from the negligence of such Affected Party or the failure of such Affected Party to perform its obligations hereunder; and
(d) such that it/they has/have a Material Adverse Effect.

21.1.2. A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Article 21.1.1:

(a) Non-Political Force Majeure Events

(i) acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements;

(ii) fire or explosion caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties;

(iii) chemical or radioactive contamination or ionizing radiation;

(iv) epidemic, plague or quarantine;

(v) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; and

(vi) accidents of navigation, air crash, shipwreck, train wreck or other similar

failures of transportation of equipment and/or material necessary for construction or C&D of the Facilities.

Non-Political Force Majeure Event shall not include the following conditions, except to the extent resulting from a Non-Political Force Majeure Event:

(A) heavy rainfall;

(B) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials or spare parts required for undertaking the Project;

(C) a delay in the performance of any Sub Concessionaire;

(D) non-performance resulting from normal wear and tear; or

(E) non-performance caused by the non-performing Party's (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case may be.

(b) Indirect Political Force Majeure Events

(A) hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism, in each case involving the GoI or the Government of Karnataka[24] or occurring in [State of Location];

(B) invasion, armed conflict, coup d'état, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving the GoI or the Government of Karnataka or occurring in [State of Location];

(C) strikes or boycotts (including non-political strikes other than those involving the Concessionaire, Sub-Concessionaires or their respective employees/representatives, or attributable to any act or omission of any of them and the indirect political strikes such as industry-wide or state-wide strikes), lockout, or other industrial

disputes which are not directly attributable to the actions of the Affected Party;

(D) any orders issued by the relevant Government BSWML, which require the Concessionaire to suspend the construction or C&D of the Facilities provided that, such orders are not attributable to the Concessionaire's breach or violation of any Applicable Laws or Applicable Permits; and

(E) delay or failure by relevant Government Authorities in renewing or granting any Applicable Permit, despite the Concessionaire having applied for such Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit.

(c) Direct Political Force Majeure Events

(A) occurrence of a Fundamental Change in Law in accordance with Article 22;

(B) compulsory acquisition in national interest or expropriation of the Site; and

(C) any order, notification or judgment issued or passed by any Government BSWML/ Court of Law/ Tribunal which restricts the Concessionaire from constructing or operating the Facilities as contemplated in this Agreement on the Site, unless such restriction is, in any manner, attributable to the Concessionaire.

(d) Without prejudice to the provisions above,

(i) any act, event or circumstance which primarily affects any of the Concessionaire Related Parties associated with the Project shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Concessionaire, it would have come within the definition of Force Majeure Event under this Article 20.1; and

(ii) any act, event or circumstance which primarily affects any of the State Government Related Parties or BSWML Related Parties shall

constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the State Government or BSWML, it would have come within the definition of Force Majeure Event under this Article 20.1.

(e) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 28, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Affected Party.

21.2 Notice of Force Majeure Events

21.2.1. The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (the "**FM Notice"**), as soon as the same arises or as soon as reasonably practicable and in any event within 3 (three) days after the Affected Party knew of its occurrence, the adverse effect it has or is likely to have on the performance of its obligations under this Agreement, the actions being taken and an estimate of the time period required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).

21.2.2. If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.

21.2.3. Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Article 21.2.

21.3 Excuse of Performance

21.3.1. If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

(a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

If a Force Majeure Event affects only one Project Facility, and not the other Project Facilities, then the Affected Party shall only be excused from the performance of its obligations in relation to the affected Project Facilities.

21.4 No Liability for Other Losses

Save and except as expressly provided in this Agreement, no Party shall be liable in any manner whatsoever to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Article 20.

21.5 Resumption of Performance

The Affected Party shall in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of a Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify the other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

21.6 Allocation of costs during a Force Majeure Event

21.6.1. Upon occurrence of a Force Majeure Event prior to the COD, the Parties shall bear their respective Costs and no Party shall be required to pay any Costs to the other Parties.

21.6.2. Upon occurrence of a Force Majeure Event after the COD, the costs incurred and attributable to such event and directly relating to the Project Facilities (the "**Force Majeure Costs**") shall be allocated and paid as follows:

(a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

(b) upon occurrence of an Indirect Political Event, all Force Majeure Costs

attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by BSWML to the Concessionaire; and

(c) Upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by BSWML to the Concessionaire.

Provided that upon occurrence of a Force Majeure Event post the COD, the Concessionaire shall be entitled to continue receiving the Capex Annuity (along with interest) and the C&D Charges during the subsistence of the Force Majeure Event.

(a) For avoidance of doubt, Force Majeure Costs may include interest payments on debt, C&D Charges, any increase in the cost of development, construction and C&D of the Project Facilities on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Revenue, or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

(b) Save and except as expressly provided in this Article 20, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

21.7 Termination due to Force Majeure Event

21.7.1. Termination due to a Non-Political Force Majeure Event

If within a continuous period of [365 (three hundred and sixty five)] days, a Non-Political Force Majeure Event continues for a period of [180 (one hundred and eighty)] days or more, after the notification of a Non-Political Force Majeure Event or any extended period agreed in pursuance of Article 21.3, any Party shall, after the expiry of the period of [180 (one hundred and eighty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

Notwithstanding anything contained in this Article 21.7:

(a) if the Project Facilities are affected by a Total Casualty, then the Concessionaire may terminate this Agreement without having to wait for the expiry of the period of [180 (one hundred and eighty)] days stipulated for a Non-Political Force

Majeure Event;

(b) if the Project Facilities are affected by a Minor Casualty, then the Concessionaire shall be required to repair and restore the Project Facilities to the same condition as previously existed and the Concessionaire shall not be entitled to terminate this Agreement on the grounds of a continuing Non-Political Force Majeure Event.

21.7.2. Termination due to an Indirect Political Force Majeure Event

If within a continuous period of [365 (three hundred and sixty five)] days, an Indirect Political Force Majeure Event continues for a period of [180 (one hundred and eighty)] days or more, after the notification of an Indirect Political Force Majeure Event or any extended period agreed in pursuance of Article 21.3, any Party shall, after the expiry of the period of [180 (one hundred and eighty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

21.7.3. Termination due to a Direct Political Force Majeure Event

(a) If within a continuous period of [365 (three hundred and sixty five)] days, an Direct Political Force Majeure Event continues for a period of [180 (one hundred and eighty)] days or more, after the notification of a Direct Political Force Majeure Event or any extended period agreed in pursuance of Article 21.3, any Party shall, after the expiry of the period of [180 (one hundred and eighty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

(b) All the other consequences of termination that are set out at Article 23 shall apply in case of termination of this Agreement due to a Force Majeure Event.

ARTICLE 22
SUSPENSION OF CONCESSIONAIRE'S RIGHTS

22.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Event of Default, BSWML/State Government shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive Payments under Article 19, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension"**). Suspension hereunder shall be effective forthwith upon issue of notice by BSWML/State Government to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lender's Representative, BSWML/State Government shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding [90 (ninety)] days.

22.2 Suspension by the Concessionaire

22.2.1. Suspension of construction or O&M of the Project Facilities

(a) At any time during the Concession Period, the Concessionaire may suspend, whether partially or wholly, the construction or O&M of any Project Facility, in case of an Emergency.

(b) The Concessionaire acknowledges that suspension of the construction of any Project Facility during the Construction Period pursuant to Article22.2.1(a) shall not entitle the Concessionaire to an extension of time, if such event is attributable to the Concessionaire.

(c) In case of suspension of the performance of the O&M services pursuant to Article 22.2.1(a) for reasons not attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest, and the O&M Charges, for the period during which it suspends the performance of the O&M services pursuant to Clause Article 22.2.1(a).

(d) Upon the occurrence of an Emergency, the Concessionaire shall as soon as reasonably possible, and in no event later than [3 (three)] days after such occurrence, notify BSWML, with a copy to the State Government, of such occurrence.

(e) If, upon notification, BSWML/State Government does not concur with the Concessionaire on the nature of such occurrence, then the Concessionaire shall be required to immediately re-commence the construction or O&M of the Project Facility, as the case may be. Upon re-commencement of the construction or O&M services, the Concessionaire may initiate a Dispute regarding its claim for the occurrence of such an event or circumstance, and such Dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 26, provided however that the burden of proof as to the occurrence or existence of such an event shall be upon the Concessionaire.

22.2.2. Mitigation, Resumption and Termination

(a) The Concessionaire shall make best endeavors to:

(i) mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Article 22.2.1(a) above. Notwithstanding anything to the contrary contained in this Agreement, if BSWML/State Government**,** in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, BSWML/State Government shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire; and

(ii) resume the construction or O&M services of the Project Facility within 24 (twenty four) hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Article 22.2.1(a) or such longer period as may be approved by BSWML/State Government and notify BSWML/State Government of the resumption of the works or services.

(b) During the period of Suspension, BSWML shall, on behalf of the Concessionaire, collect all fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. BSWML/State Government shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for discharging the Concessionaire's obligations;

(c) During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by BSWML/State Government for discharging the obligations of the Concessionaire under and in accordance with this Agreement

and the Project Agreement, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify BSWML for all costs incurred during such period.

(d) Without prejudice to Clause 22.2.2(a):

(i) if suspension of the construction or O&M of a Project Facility pursuant to Article 22.2.1(a) continues for a period of [60 (sixty)] days, and such event is attributable to the Concessionaire, then such suspension shall amount to a Concessionaire Event of Default in accordance with Article 23; and

(ii) if suspension of the construction or O&M of a Project Facility pursuant to Article 22.2.1(a) continues for a period of [60 (sixty)] days, and such event is not attributable to the Concessionaire, then such event will be treated as a Force Majeure Event and the consequences set out in Article 21 shall apply.

22.3 Suspension by BSWML or the State Government

22.3.1. Suspension of construction and/or O&M of the Facilities

(a) At any time during the Concession Period, BSWML/State Government may suspend, whether partially or wholly, the construction or O&M of a Project Facility, in any of the following events or circumstances:

(i) upon the occurrence of an Emergency; or

(ii) if the Concessionaire fails to comply with Applicable Laws, Applicable Permits, the ESHS Documents, the O&M Manual or otherwise fails to perform its obligations in accordance with this Agreement (including the Technical Specifications).

(b) The Concessionaire acknowledges that suspension of the construction of the Project Facilities during the Construction Period pursuant to Article 21.3.1(a) shall not entitle the Concessionaire to an extension of time if such event is attributable to the Concessionaire.

(c) In case of suspension of the performance of the O&M services pursuant to Article 22.3.1(a) for reasons attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest, less the Liquidated Damages payable by the Concessionaire for

failure to operate the Project Facilities pursuant to Article 22.3.1(a). The Concessionaire shall not be entitled to the O&M Charges for the period during which it suspends the performance of the O&M services pursuant to Article 22.3.1(a).

(d) In case of suspension of the performance of the O&M services pursuant to Article 22.3.1(a) for reasons not attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest, and the O&M Charges, for the period during which it suspends the performance of the O&M services pursuant to Article 22.3.1(a).

22.3.2. Mitigation, Resumption and Termination

(a) The Concessionaire shall make best endeavors to:

(i) mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Article 22.3.1 above. Notwithstanding anything to the contrary contained in this Agreement, if the BSWML/State Government, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, BSWML/State Government shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost (as determined by the Project Engineer) and risk of the Concessionaire; and

(ii) resume the construction or O&M services of the relevant Project Facility within
24 (twenty four) hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Article 22.3.1 or such longer period as may be agreed between the Parties, and notify BSWML/State Government of the resumption of the works or services.

(b) Without prejudice to Article 22.3.2(a):

(i) if suspension of the construction or O&M of the relevant Project Facility pursuant to Article 22.3.2(a)(i) and the Emergency is attributable to the Concessionaire, or a such suspension continues for a period of 60 (sixty) days, and such suspension is attributable to the Concessionaire then such suspension shall amount to a Concessionaire Event of Default in accordance with Article 23; and

(ii) if suspension of the construction or O&M of the relevant Facility pursuant to Article 22.3.2(a)continues for a period of 60 (sixty) days, and such suspension is not attributable to the Concessionaire, then such suspension will be treated as a Force Majeure Event and the consequences set out in Article 21 shall apply.

22.4 Revocation of Suspension

22.4.1 In the event that BSWML/State Government shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall have the option to revoke the Suspension and restore the rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that BSWML/State Government may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

22.4.2 Upon the Concessionaire having cured the Event of Default within a period not exceeding 90 (ninety) days from the date of Suspension, BSWML/State Government shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

22.5 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice there under from the Lender's Representative, BSWML/State Government shall withhold Termination for a period not exceeding [180 (one hundred and eighty)] days from the date of Suspension, and any extension thereof due to Concessionaire default, for enabling the Lenders‟ Representative to exercise its rights of substitution on behalf of Senior Lenders.

22.6 Termination

22.6.1 At any time during the period of Suspension under this Article 22, the Concessionaire may by notice require BSWML/State Government to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement, BSWML State Government shall, within [15 (fifteen)] days of receipt of such notice, terminate this Agreement under and in accordance with Article 22.

22.6.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within [180 (one hundred and eighty)] days from the date of Suspension hereunder or within the extended period, if any, the Concession Agreement shall, upon expiry of aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by BSWML State Government upon occurrence of a Concessionaire Default.

ARTICLE 23
CHANGE IN LAW

23.1 Change in Law

The Concessionaire may claim the benefit of and/or relief for a Change in Law event subject to and in accordance with this Article 23.

23.2 Consequences of Change in Law

23.2.1. The Concessionaire shall not be allowed any relief and/or compensation for any Change in Law which is not a: (i) Qualifying Change in Law; or (ii) Fundamental Change in Law.

23.2.2. If a Qualifying Change in Law occurs, then the Concessionaire shall notify the State Government and BSWML of such Qualifying Change in Law along with details of:

(a) any necessary change in the Construction Plan, the C&D Manual or the Technical Specifications on the basis of which construction works and C&D services are required to be undertaken for the Facilities;

(b) any changes that are required to the terms of this Agreement to deal with such Qualifying Change in Law;

(c) any extension of the Scheduled Payment Milestone Completion Date or the Scheduled Construction Completion Date, to account for the delay, if any, resulting from the Qualifying Change in Law; and/or

(d) any increase in Costs that will result from the Qualifying Change in Law.

23.2.3. As soon as practicable and in any event, within 30 (thirty) days from the receipt of any notice from the Concessionaire under Article 23.2.2 above, the Parties shall agree on the consequences of the Qualifying Change in Law, as specified in the notice, and any way in which the Concessionaire can mitigate the effect of the Qualifying Change in Law, including:

(a) providing evidence that the Concessionaire has used reasonable endeavors (including, where practicable, the use of competitive quotes) to minimise any

increase in Costs or oblige the Sub-Concessionaires to minimise any increase in Costs;

(b) providing evidence as to how the Qualifying Change in Law has affected prices of materials used for construction or O&M of Project facilities; and

(c) demonstrating to the State Government and BSWML that the Qualifying Change in Law is the direct cause of the increase in Costs or delay and the estimated increase in Costs, or extension of time could not reasonably be expected to be mitigated or recovered by the Concessionaire.

23.2.4. If the Parties fail to agree on the consequences of the Qualifying Change in Law within 30 (thirty) days from the receipt of any notice from the Concessionaire under Article 23.2.2 above, the dispute will be finally settled in accordance with the dispute resolution procedure set out in Article 28.

23.2.5. If the Concessionaire has complied with Article 23.2.3 above and the Parties mutually agree or it is determined in accordance with Article 23.2.4 above, that the Concessionaire is required to incur additional Costs due to a Qualifying Change in Law, then:

(a) the Concessionaire shall be required to bear all Costs resulting from any one or more Qualifying Change in Law events, up to an aggregate amount equivalent to 0.5% (zero point five per cent) of the total Bid Project Cost (the **"Threshold Limit"**); and

(b) for any additional Costs resulting from the Qualifying Change in Law, which is in excess of the Threshold Limit, the Concessionaire shall be entitled to be compensated for such additional Costs, in excess of the Threshold Limit, by way of,

(i) a lump-sum payment of an amount equivalent to the additional Costs incurred by the Concessionaire, over and above the Threshold Limit; or

(ii) an appropriate adjustment in the O&M Charges.

(c) If the Concessionaire has complied with Article 23.2.3 above and the Parties mutually agree or it is determined in accordance with Article 28 that the Concessionaire will suffer any delay as a result of the occurrence of a Qualifying Change in Law, then the Concessionaire shall be entitled to an extension of time as mutually decided by BSWML, State Government and Concessionaire.

(d) In case of a dispute with respect to the quantum of relief (whether extension of time or compensation) that the Concessionaire shall be entitled to under this

Article 22.2 shall be as agreed by the Parties or as determined in accordance with Article 26, provided always that:

(i) the Concessionaire shall bear any increased Cost to the extent of the Threshold Limit; and

(ii) the Concessionaire shall only be entitled to relief that is reasonable for such Qualifying Change in Law.

(e) Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall not be entitled to any schedule relief and/or compensation or adjustment in the Bid Project Cost or the O&M Charges due to a Qualifying Change in Law, if such Qualifying Change in Law becomes applicable as a result of a delay in the execution of the Project, which is not attributable to a Delay Event.

(f) If a Fundamental Change in Law occurs, then,

(i) the affected Party may notify the other Parties of the effects of such Fundamental Change in Law on the validity and enforceability of this Concession Agreement or on the rights of the Concessionaire under this Agreement; and

(ii) any Party may propose amendments to the Concession Agreement, which would make the Concession Agreement compliant with Applicable Laws, while enabling the Parties to achieve their commercial objectives.

If the Parties are unable to agree on necessary amendments to the terms of this Agreement within 30 days of receipt of a notice from the affected Party or the Fundamental Change in Law event is such that it cannot be mitigated with amendments to the terms of this Agreement, the Fundamental Change in Law event shall be treated as a Direct Political Force Majeure Event in accordance with Article 21.

23.3 ~~Increase in costs:~~ NOT APPLICABLE

~~23.3.1. Change in Law shall mean the occurrence or coming into force of any of the following, after the Compliance Date:~~

~~(a) The enactment of any new Indian law including laws related to environment, emission standards, etc.;~~

~~(b) The repeal, modification or re-enactment of any Applicable Law;~~

~~(c) A change in the interpretation or application of any Indian law by a court of record; Provided that Change in Law shall not include:~~

~~(a) Coming into effect, after the Compliance Date, of any provision or statute which is already in place as of the Compliance Date,~~

~~(b) Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Compliance Date which is a matter of public knowledge (including *inter-alia*, by laws, directions, orders, regulations to be issued under the SWM Rules);~~

~~(c) Any change in the rates of the Taxes which have a direct effect on the Project.~~

~~23.3.2. Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden (the "**Additional Cost**"), the aggregate financial effect of which exceeds Rs. [•] (Rupees [•]) in any Financial Year, the Concessionaire may so notify the Project Engineer/ BSWML/ State Government and notify with the information as required~~

~~under Article 22.3.3 below and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. The said remedial measures would be discussed and consequences arising there from shall be dealt with as per terms of Article 22.3.4 below.~~

~~23.3.3. Upon occurrence of a Change in Law, the Concessionaire shall promptly, notify the Project Engineer/BSWML/ State Government of the following:~~

~~(a) The nature and the impact of Change in Law on the Project;~~

~~(b) the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law;~~

~~(c) The measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost;~~

~~(d) The relief sought by the Concessionaire.~~

~~23.3.4. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.~~

~~Provided that if no agreement is reached in respect of aforesaid remedial measure to cure the adverse effect of Change in Law within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require BSWML/State Government to pay an amount equivalent to 50% (fifty per cent) of Additional Cost as determined/ certified by BSWML/State Government based on the facts and circumstances and verification of information submitted by the Concessionaire. For the avoidance of doubt, it is agreed that this Article 22 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.~~

ARTICLE 24
EVENTS OF DEFAULT AND TERMINATION

24.1 Events of Default

Event of Default shall mean either Concessionaire Event of Default or BSWML Event of Default or State Government Event of Default or all three as the context may admit or require.

24.2 Concessionaire Event of Default

24.2.1. In addition to any events specified elsewhere in this Agreement, events arising out of any acts or omissions of the Concessionaire and which have not occurred solely as a consequence of a BSWML Event of Default, a State Government Event of Default, a Qualifying Change in Law, a Fundamental Change in Law or any other Force Majeure Event, and where the Concessionaire has failed to remedy the defects within any specified time period (to the extent any time period is provided), any of the following events shall constitute an Event of Default by the Concessionaire (the **"Concessionaire Event of Default"**):

(a) failure of the Concessionaire to complete the construction of a Project Facility by the expiry of the Grace Period;

(b) failure of the Concessionaire to pay the Delay Liquidated Damages within the timelines specified in this Agreement;

(c) failure of the Concessionaire to achieve successful completion of Trial Operations of Project Facilities;

(d) failure of the Concessionaire to remedy any reduction in Availability within [3 (three)] days of receipt of a notice from BSWML in accordance with Article18;

(e) failure of the Concessionaire to build and/or operate the Project in compliance with the KPIs and Technical Specifications;

(f) for any Project Facility, failure of the Concessionaire to achieve the KPIs for [2 (two)] consecutive days, [32 (thirty two)] times in a continuous [12 (twelve)] month period;

(g) suspension of the construction or C&D of a Project Facility pursuant to Article 22 (to the extent such Emergency is attributable to the Concessionaire) for a continuous period of 60 (sixty) days;

(h) a breach by the Concessionaire of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct and/or operate and maintain the Project Facilities and such breach, if capable of being remedied, is not remedied within [30 (thirty)] days of issuance of written notice from BSWML specifying such breach and requiring the Concessionaire to remedy the same;

(i) any representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading in any material respect failure of the Concessionaire to submit and maintain a valid Performance Securities and C&D Securities in accordance with Article 9;

(j) failure of the Concessionaire to maintain a valid Mobilization Advance Guarantee in accordance with Article 9;

(k) breach by the Concessionaire of its obligations set forth in this Agreement;

(l) failure of the Concessionaire to obtain, renew and maintain any Concessionaire Applicable Permits;

(m) failure of the Concessionaire to comply with any Applicable Law (including specifically the EPA);

(n) failure of the Concessionaire to obtain and maintain insurance cover in accordance with Article 28;

(o) failure of the Concessionaire or the Sub-Concessionaires to comply with the ESHS Documents in accordance with Article 14;

(p) the breach of the Concessionaire's obligations under or the occurrence of an Event of Default or analogous event under the Financing Agreements or the Escrow Agreement, or termination of the Financing Agreements, or the Escrow Agreement (for reasons attributable to the Concessionaire).

(q) abandonment of the Project by the Concessionaire;

(r) the Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;

(s) a resolution for insolvency of the Concessionaire is passed, or any petition for insolvency of the Concessionaire is initiated before a court (including tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 and such application has not been withdrawn within 14 (fourteen) days of the date thereof;

(t) if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;

(u) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court (including tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 or Companies Act, 1956/ Companies Act, 2013 and a liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the agreements in relation thereto; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the agreements in relation thereto; and

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the agreements in relation thereto and has a credit worthiness at least as good as that of the Concessionaire as at the Effective Date.

24.3 BSWML Event of Default and State Government Event of Default

24.3.1. Any of the following events shall constitute an event of default by BSWML (the **"BSWML Event of Default"**), when not caused by a Concessionaire Event of Default or Force Majeure Event:

(a) BSWML has failed to make any payments due to the Concessionaire and more than 90 (ninety) days have elapsed since such default;

(b) BSWML or the Department or the Project Engineer is in Material Breach of any of its obligations under this Agreement and have failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by the Concessionaire;

(c) BSWML has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;

(d) BSWML has unreasonably withheld or delayed grant of any approval or permission within its respective jurisdictions and such delay and withholding is not attributable to Concessionaire or Force Majeure which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;

(e) Any representations made or warranties given by BSWML under this Agreement have been found to be false or misleading.

24.3.2. A **State Government Event of Default** means any of the following events, unless such an event has occurred as a consequence of a Concessionaire Event of Default, or a Force Majeure Event and where the State Government has failed to remedy the defects within any specified time period (to the extent any time period is provided):

(a) a failure by the State Government to pay any undisputed amounts due and payable for 90 (ninety) consecutive days, notwithstanding service of a formal written demand by the Concessionaire;

(b) a failure by the State Government or BSWML to maintain the Minimum Escrow Balance for a period of 90 (ninety) days;

(c) any representation made or warranties given by the State Government under this Agreement being found to be false or misleading in any material respect.

24.4 Termination due to Event of Default

24.4.1 Termination for Concessionaire Event of Default

(a) Without prejudice to any other right or remedy which BSWML may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, BSWML shall, be entitled to terminate this Agreement in the manner as set out under Article 24.4.1(b) and Article 24.4.1(c).

(b) Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Article 24.2, BSWML may terminate this Agreement by issue of Termination Notice in the manner set out under Article 24.4.3 after giving the Concessionaire an opportunity of hearing.

(c) If BSWML decides to terminate this Agreement pursuant to preceding Article 24.4.1(a), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 (thirty) days of receipt of the Preliminary Notice, the Concessionaire shall submit to BSWML in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "**Concessionaire's Proposal to Rectify**").

(d) In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 (thirty) days, the State Government and BSWML shall be entitled to terminate this Agreement by issuing Termination Notice, and the Performance Security of the Concessionaire shall get forfeited.

(e) If the Concessionaire's Proposal to rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying event of default within such further period allowed, the State Government and BSWML shall be entitled to terminate this Agreement, by issue of Termination Notice and the Performance Security of the Concessionaire shall get forfeited.

24.4.2 Termination for BSWML Event of Default or State Government Event of Default

(a) Without prejudice to any other right or remedy which the Concessionaire may

have in respect thereof under this Agreement, upon the occurrence of BSWML Event of Default or State Government Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice;

(b) If the Concessionaire decides to terminate this Agreement pursuant to preceding Article 24.4.2(a) it shall in the first instance issue Preliminary Notice to BSWML or the State Government, as the case may be. Within 30 (thirty) days of receipt of Preliminary Notice, BSWML or the State Government, as the case may be, shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "**BSWML/State Government Proposal to Rectify**"). In case of non-submission of Proposal to rectify by BSWML or the State Government, as the case may be, within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice;

(c) If BSWML/State Government Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefore, BSWML or the State Government, as the case may be, shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however, BSWML or the State Government, as the case may be, fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

24.4.3 Termination Notice

If a Party has become entitled to do so decide to terminate this Agreement pursuant to the preceding sub Article 24.4.1 or 24.4.2, it shall issue Termination Notice setting out:

(a) in sufficient detail the underlying Event of Default;

(b) the Termination Date which shall be a date occurring not earlier than 60 (sixty) days from the date of Termination Notice;

(c) the estimated Termination Payment including the details of computation thereof; and,

(d) any other relevant information.

24.4.4 Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

(a) until Termination is final the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project;

(b) the Termination Payment, if any, payable by BSWML/State Government in accordance with the Article 24.4.5 is paid to the Concessionaire within 30 (thirty) days of the Termination Date; and

(c) the Project is handed over to BSWML/State Government by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to BSWML or the State Government.

24.4.5 Termination Payment for BSWML Event of Default or State Government Event of Default

Upon Termination of this Agreement on account of BSWML Event of Default or State Government Event of Default, the Concessionaire shall be entitled to receive back the Performance Security and also receive an amount equal to Debt Due and 110% (one hundred and ten per cent) of the Adjusted Equity as Termination Payment.

24.4.6 Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same. Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

24.4.7 Termination Payment for Concessionaire Event of Default

(a) Upon Termination of this Agreement on account of Concessionaire Event of Default before COD, no Termination Payment shall be made to the Concessionaire and the State Government or BSWML shall be entitled to forfeit the Performance Security of the Concessionaire;

(b) Upon Termination of this Agreement on account of Concessionaire Event of Default after COD, the State Government or BSWML shall be entitled to forfeit the Performance Security of the Concessionaire and pay Termination Payment to the Concessionaire as specified below:

An amount equal to 90% (ninety per cent) of Debt Due less Insurance cover; provided that, if any, insurance claims forming part of the Insurance cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

24.4.8 Upon termination of this Agreement

(a) The Concessionaire shall cease all work in relation to construction of the Project Facilities.

(b) The Concessionaire shall cease all work in relation to O&M of the Project Facilities.

(c) The Concessionaire shall take all necessary steps to safeguard and protect the Project

Facilities (at whatever stage of completion or operation) and all other equipment, materials and goods on the Sites.

(d) The Concessionaire shall hand over the Sites and the immovable assets, to BSWML or its nominee, to the extent applicable, as per Articles 24.4.9, 23.4.10, and 24.4.11.

(e) In case of termination of this Agreement due to an BSWML Event of Default or State Government Event of Default, BSWML shall return the Performance Securities, the C&D Securities and the Mobilization Advance Guarantees, if not already returned to the Concessionaire, after adjusting any outstanding payments owed by the Concessionaire, within 30 (thirty) days from the Transfer Date.

(f) The Concessionaire agrees that on the service of a Termination Notice or 180 (one hundred and eighty) days prior to the expiry of the Concession Period by efflux of time, it shall conduct or cause to be conducted by the Project Engineer/ BSWML / State Government, a survey (the **"Condition Survey"**) and inspection of the Project to ascertain the condition thereof, verify compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project;

(g) If, as a result of the Condition Survey, BSWML/State Government, and the Project Engineer shall observe/notice that the Project or any part thereof is not in the condition required thereof under this Agreement (except normal wear and tear) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in the requisite conditions well before the Termination Date.

24.4.9 Transfer of the Sites and the Project Facilities

Upon the expiry or early termination of this Agreement, the Concessionaire shall hand over the Sites, the immovable assets such as Processing Facility, Material Recovery Facility, decentralized units, etc., to BSWML any other entity nominated by BSWML in accordance with this Article 24 on a date mutually decided by BSWML and the Concessionaire (the **"Transfer Date"**).

24.4.10 Inspection of the Sites and the Project Facilities

(a) No later than 30 (thirty) days from the end of the 19th(nineteenth) year of the Construction and Processing period or 30 (thirty) days from the date of termination of the Agreement, as the case may be, BSWML/State Government shall or shall cause the Project Engineer to carry out a condition survey of the Sites and the Project Facilities to assess whether they have been maintained by the Concessionaire in accordance with its obligations under this Agreement, and are in working condition in line with the design life of the Project Facilities.

(b) BSWML/State Government shall notify the Concessionaire at least 7 (seven) days prior to the date on which it wishes to carry out the survey of the Sites and the Project Facilities.

(c) If the survey carried out by BSWML/State Government or the Project Engineer shows that the Concessionaire has not or is not complying with its obligations under this Agreement, then BSWML/State Government shall notify the Concessionaire of the rectification and/or maintenance work which is required to

ensure that the condition of the Sites and the Project Facilities is restored to the Hand-back Conditions.

(d) The Concessionaire shall carry out such rectification and/or maintenance work to achieve the Hand-back Conditions within 30 (thirty) days from the receipt of a notice from BSWML/State Government in accordance with Article 24.4.10(c) above, at its own cost and risk. Upon completion of the rectification and/or maintenance work, the Concessionaire shall request BSWML State Government to carry out a final survey and inspection of the Sites and the Project Facilities. BSWML shall carryout the final survey within 7 (seven) days of receipt of a notice from the Concessionaire pursuant to this Article 24.4.10(d). [At the discretion of BSWML/State Government, the Concessionaire may be allowed extension of the period of [15 (fifteen)] days to rectify the defects notified by BSWML/State Government or Project Engineer if and to the extent that the Project Facilities cannot be used for the purposes for which they are intended after handing over by reason of a defect or damage attributable to the Concessionaire.]

(e) If BSWML/State Governments are satisfied with the results of the final survey, then BSWML shall notify the Concessionaire within 7 (seven) days of carrying out the final survey that the Sites and the Project Facilities, comply with the Hand-back Conditions. If BSWML/State Governments not satisfied with the results of the final survey, then BSWML shall or shall cause the Project Engineer to estimate the cost of restoring the Sites and the Project Facilities to the Hand-back Conditions and recover such cost from the Concessionaire OR compensate for the investment made by Concessionaire suitably at the mutually agreed rates. The final decision of the compensation lies with the apex authority of BSWML/ state government. The concessionaire is binding upon the decision of the BSWML/State government.

24.4.11 Hand-back Requirements

On the expiry or early termination of this Agreement, the Concessionaire shall, at its own cost:

(a) hand over to BSWML or any entity nominated by BSWML, the Sites and the Project Facilities;

(b) to the extent that such rights and interests are not already vested in BSWML, transfer all its rights and interest in the immovable assets comprising in the

Project Facilities and execute such deeds and documents as may be necessary for this purpose and complete all related legal or other formalities;

(c) hand over all records and documents relating to the Sites and the Project Facilities including as-built records, Designs and Drawings, online monitoring and metering data, operating logs, manuals, reports, plans and records;

(d) transfer to BSWML or its nominee (free of cost) the license to use the Proposed Technology and other know-how relating to the Project Facilities;

(e) transfer or cause to be transferred to BSWML or its nominee any sub-contract that BSWML or its nominee has chosen to take over and terminate all other sub-contracts;

(f) transfer to BSWML or its nominee all Concessionaire Applicable Permits which BSWML or its nominee may require, and which can be legally transferred;

(g) remove from the Sites all employees and workmen, and movable assets, equipment and materials that are not required to be taken over by BSWML or its nominee; and

(h) cooperate with and assist BSWML with the Project post the handing over.

24.4.12 Consequences of termination due to a Force Majeure Event

In case of termination of the Agreement due to a Force Majeure Event, the following consequences shall apply:

(a) the Concessionaire shall hand over the Sites and the immovable assets, to BSWML on an "as is where is" basis and to the extent relevant;

(b) BSWML shall be required to return the Performance Securities or the C&D Securities, as the case may be, after adjusting any outstanding payments owed by the Concessionaire, to the Concessionaire within 30 (thirty) days from the Transfer Date; and

(c) in case of termination due to an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, BSWML shall (or shall require the Project Engineer) to assess the Cost of the construction work undertaken by the Concessionaire in relation to the Project Facilities as on the date of the Termination Notice and based on such assessment, pay the Termination Compensation in accordance with Article 24.

24.5 Rights of BSWML on Termination

23.5.1 Upon Termination of this Agreement for any reason whatsoever, BSWML shall upon making the Termination Payment, if any, to the Concessionaire, have the power and BSWML to:

(a) enter upon and take possession and control of the Sites, constructed Project Facilities and the immovable assets, forthwith;

(b) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project including Project Facilities and the immovable assets;

23.5.2 Notwithstanding anything contained in this Agreement, BSWML shall not, as consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handover of the Project Facilities by the Concessionaire to BSWML shall be free from any such obligation/

fee/ penalties/taxes.

23.5.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to BSWML/State Government with the necessary particulars, and in the event of any delay, BSWML/State Government shall pay interest at a rate equal to 3% (three per cent) above the State Bank of India Base Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that the Termination Payments shall become due and payable by BSWML/State Government upon actual or constructive handover of the Sites, Project Facilities and immovable assets by the Concessionaire to BSWML clear from all encumbrances, charges and liens whatsoever, unless expressly agreed by the Parties otherwise.

23.5.4 The Concessionaire expressly agrees that Termination Payment under this Article 23 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

23.5.5 BSWML, the State Government, and the Concessionaire hereby unconditionally acknowledge and agree that, without prejudice to their any other right or remedy, BSWML or the State Government shall be entitled to pay the Termination Payment [to the extent required] to the Lenders‟ Representative for procuring discharge/ release of the any charge/ hypothecation created by Concessionaire on the movable assets for securing payment of Debt Due; and for this purpose the Lender is entitled to receive from BSWML/State Government, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due as aforesaid, the Lenders‟ Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement; and Concessionaire hereby irrevocably agree that such payment by BSWML/State Government shall be full and final settlement of proportionate claim of Termination Payment to the Concessionaire under this Agreement.

24.6 Accrued Rights and liabilities of Parties

(a) Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money as damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

(b) Nothing in Article 23 shall prevent or restrict a Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

ARTICLE 25
TERMINATION COMPENSATION

25.1 Termination Compensation for Termination post the Compliance Date but prior to the Construction Completion Date

25.1.1. For an BSWML Event of Default or State Government Event of Default

Upon Termination of this Agreement on account of Authority Event of Default, the Concessionaire shall receive from Authority by way of Termination Payment, an amount equal to:

Termination payment = 120% (one hundred and twenty percent) of the Book value of the project + 105% of the unexpired/future cash flow discounted at the rate of 12%. For the avoidance of doubt the future

cash flow shall be submitted and accepted by the Authority in the initial DPR.

And the Concessionaire shall be entitled to withdraw the Performance Bank Guarantee, if subsisting, provided that the Performance Bank Guarantee shall be withdrawn only after substitution of the

Concessionaire in accordance with the provisions of Substitution Agreement, if any.

25.1.2. For a Concessionaire Event of Default (in accordance with **Schedule 18**)

Upon Termination on account of a Concessionaire Default during the Operations Period, Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 100% (One Hundred per cent)202 of the Book value of Project + 70% of the unexpired/future cash flow discounted at the rate of 12%. For the avoidance of doubt, the future cash flow shall be submitted and accepted by the Authority in the initial DPR. Further, Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD Integrated Waste Management Facility. Termination payment shall become due and payable to the Concessionaire within 15 (fifteen) days of such demand made by the Concessionaire to Authority with the necessary particulars and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three percent) above the State Bank PLR rate on the amount of termination payment remains unpaid; provided such delay shall not exceed 90 (ninety days). For the avoidance of doubt, it is expressly agreed that Termination payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire i. Debt Due less Insurance Cover for assets under Concessionaire ownership; provided that if any Insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and

ii. 110% (one hundred and ten per cent) of the Book value.

If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

i. 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and

ii. 110% (one hundred and ten per cent) of the Book Value of Project.

If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount as if it were an Authority Event of Default.

Termination payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand by the Concessionaire to the Authority with the necessary particulars and in the event of any delay, the Authority shall pay interest at a rate of equal to 3% (three percent) above the Bank Rate on the amount of termination payment remaining unpaid; provided such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations is respect thereof hereunder.

25.2 Termination Compensation for Termination post the Construction Completion Date but prior to the COD

25.2.1. For an BSWML Event of Default or State Government Event of Default

If the Agreement is terminated post the Construction Completion Date but prior to the COD for an BSWML Event of Default or State Government Event of Default, BSWML or the State Government shall be liable to pay to the Concessionaire the aggregate of:

(a) Construction Payments, if not already paid as on the date of the Termination Notice;

(b) Debt Due;

(c) Equity infused in the Concessionaire as on the date of Termination Notice along with interest on the Equity at the rate of the prevailing SBI MCLR + 3% (three per cent);

LESS

(a) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

25.2.2. For a Concessionaire Event of Default (in accordance with **Schedule 18**)

If the Agreement is terminated post the Construction Completion Date but prior to the COD for a Concessionaire Event of Default, BSWML or the State Government shall pay to the Concessionaire, the aggregate of:

(a) Construction Payments, if not already paid as on the date of the Termination Notice;

(b) 85% (eighty five per cent) of Debt Due;

LESS

(a) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

25.3 Termination Compensation for Termination post the COD

25.3.1. For an BSWML Event of Default or State Government Event of Default

If the Agreement is terminated post the COD for an BSWML Event of Default or State Government Event of Default, BSWML or the State Government shall be liable to pay to the Concessionaire the aggregate of:

(a) Construction Payments that remain outstanding on the date of the Termination Notice;

(b) C&D Payments due to the Concessionaire as on the date of the Termination

Notice;

(c) Capex Annuity for the unexpired portion of the Construction and Processing period;

LESS

(a) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

25.3.2. For a Concessionaire Event of Default (in accordance with **Schedule 18**)

If the Agreement is terminated post the COD for a Concessionaire Event of Default, BSWML or the State Government shall pay to the Concessionaire, the aggregate of:

(a) Construction cost that incurred by Concessionaire on the date of the Termination Notice;

(b) O&M Payments due to the Concessionaire as on the date of the Termination Notice;

LESS

(a) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

25.4 Termination Compensation for Termination due to a Force Majeure Event

25.4.1. Non-Political Force Majeure Event and Indirect Political Force Majeure

(a) If the Agreement is terminated due to an Indirect Political Force Majeure Event or Non- Political Force Majeure Event, prior to the COD:

(i) Construction Payments due to the Concessionaire for Milestones completed and certified by BSWML as on the date of the Termination Notice under Article 20;

(ii) Debt Due;

LESS

(i) any insurance proceeds received and retained by the Concessionaire

(b) If the Agreement is terminated due to an Indirect Political Force Majeure Event or Non- Political Force Majeure Event, post the COD, BSWML or the State Government shall be liable to pay to the Concessionaire:

(i) Construction cost that incurred by Concessionaire on the date of the Termination Notice in case of facilities under Article 20;

(ii) O&M Payments due to the Concessionaire as on the date of the notice of termination under Article 20;

(iii) Debt Due;

LESS

(i) any insurance proceeds received and retained by the Concessionaire.

(c) Direct Political Force Majeure

(i) If the Agreement is terminated due to a Direct Political Force Majeure Event, prior to the COD, BSWML or the State Government shall be liable to pay to the Concessionaire:

(A) Construction Payments due to the Concessionaire for Milestones completed and certified by BSWML as on the date of the notice of termination under Article 20;

(B) Debt Due;

(C) Equity infused in the Concessionaire as on the date of the notice of termination under Article 20 along with interest on the Equity at the rate of the prevailing SBI MCLR + 3% (three per cent);

LESS

(D) any unadjusted Mobilization Advance (and interest if any);

(E) any insurance proceeds received and retained by the Concessionaire; and

(F) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

(ii) If the Agreement is terminated due to a Direct Political Force Majeure Event post the COD, BSWML or the State Government shall be liable to pay to the Concessionaire:

(A) Construction cost that incurred by Concessionaire on the date of the notice of termination under Article 20;
(B) O&M Payments due to the Concessionaire as on the date of the notice of termination under Article 20;

LESS

(C) any insurance proceeds received and retained by the Concessionaire; and
(A) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

25.5 All Termination Compensation required to be paid by ***the State Government or BSWML*** to the Concessionaire shall be paid within 60 (sixty) days of transfer of the Sites and the Project Facilities in accordance with Article 23.

25.6 Limitations on Termination Compensation

(a) Termination Compensation, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Bid Project Cost, in accordance with the provisions of this Agreement. For avoidance of doubt, it is agreed that within a period of [60 (sixty)] days from COD, the Concessionaire shall notify to BSWML (with a copy to the State Government), the Bid Project Cost and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Compensation, and it is further agreed that in the event such disaggregation is not notified to BSWML, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as

specified in the Financing Agreements. The Parties also agree that, notwithstanding anything contained in this Agreement, for the purposes of computing Termination Compensation, the Debt Due shall at no time exceed [50% (fifty per cent)] of the Bid Project Cost.

(b) The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Compensation. Provided, however, that the provisions of this Article 24.6 (b) shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within [60 (sixty)] days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of the Bid Project Cost ad any borrowings in excess thereof shall not qualify for computation of Termination Compensation.

25.7 Full and Final Settlement

Notwithstanding anything to the contrary elsewhere in this Agreement, any Termination Compensation determined pursuant to this Article 24 shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Concessionaire against BSWML or the State Government, in relation to Termination of this Agreement and the Concessionaire shall be excluded from all other rights and remedies in respect of such Termination.

25.8 The provisions of this Article 24 shall survive the Termination of this Agreement. Rights of Authority on Termination

a. Upon Termination of this Agreement for any reason whatsoever, Authority shall have the power and authority to:

i. Enter upon and take possession and control of the Project Facilities, Plant, and Site, forthwith free from any encumbrances after clearing the termination payments to the concessionaire.

ii. Prohibit Concessionaire and any person claiming through or under Concessionaire from entering upon dealing with the Project Facilities, Plant, and Site or permit as required for pending resolution of any issues to a limited number of representatives of Concessionaire.

b. Notwithstanding anything contained in this Agreement, Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re- employment on any ground, in relation

to any person in the employment of or engaged by Concessionaire in connection with the Project, and the handover of the Project Facilities by Concessionaire to Authority shall be free from any such obligation.

25.9 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it

has in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 26
SUBSTITUTION OF THE CONCESSIONAIRE

26.1 Substitution by Lenders' Representative

In the event of Concessionaire's default, BSWML shall, if there be any Lenders, send copy of the Termination Notice to the Lenders‟ Representative to inform and grant

15 (fifteen) days to the Lenders‟ Representative, for making representation on behalf of the Lenders stating the intention to substitute the Concessionaire. In case BSWML receives representation on behalf of the Lenders, within the aforesaid period, BSWML shall withhold the termination for period not exceeding 180 (one hundred and eighty) days, for enabling the Lenders‟ Representative to exercise the Lenders‟ right of substitution in accordance with the Substitution Agreement, and substitute the Concessionaire with Nominated Company.

26.2 Substitution by BSWML

In the event that no company is nominated by the Lender's Representative to act as the Nominated Company, BSWML may either substitute the Concessionaire with its own Nominated Company in accordance with the Substitution Agreement, or terminate the Agreement.

26.3 Substitution Process

While carrying out substitution, the Lender's Representative or BSWML, as the case may be, shall invite competitive bids from the prospective parties for acting as the Nominated Company and substituting the Concessionaire. Such Nominated Company shall have to agree to bear all the liabilities of the Concessionaire in terms of this Agreement and Financing Agreement.

26.4 Consequences of Substitution

BSWML shall grant, to the Nominated Company, the right to develop, design, finance, construct, operate and maintain the Project (including entering into Sub-Contracts) together with all other rights of the Concessionaire under this Agreement, subject to fulfillment of the Concessionaire's entire obligation under this Agreement by such Nominated Company, for the remainder of the term of this Agreement. Such rights shall be granted by BSWML through the novation of the Agreement, if applicable, in favour of the Nominated Company.

BSWML shall also execute a new Substitution Agreement with the Nominated Company and the Lenders, if there be any. All Sub-Contracts and agreements in respect of the Project including Financing Agreements and all Sub-Contracts executed by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. Further all rights of the Concessionaire on the Sites and Project Assets in terms of the Agreement shall stand transferred and novated in favour of the Nominated Company. All approvals/ clearances of BSWML received by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. The Concessionaire shall get replaced by the Nominated Company for all purposes related to the Project.

ARTICLE 27

DISPUTE RESOLUTION

27.1. Amicable Resolution

27.1.1. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of BSWML State Government (the "**Dispute**") and so notified in writing by either Party, shall in the first instance be attempted to be resolved amicably by the representatives of the Parties in accordancewiththeproceduresetforthinArticle27.1.2below.

27.1.2. In the event of a Dispute, either Party may require such Dispute to be referred to the competent BSWML, the State Government, BSWML (or the Person holding charge) and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the representatives of the Parties shall within 15 (fifteen) days of service of a written notice from one Party to the other Party (ies) (the **"Dispute Notice")** hold a meeting (the **"Dispute Meeting"**) in an effort to resolve the Dispute in good faith. In the absence of any agreement to the contrary, the Dispute Meeting shall be held at the office of BSWML/State Government in [Location] and the Dispute may be mutually settled between the parties.

27.1.3. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

27.1.4. If the Dispute is not amicably settled within 15 (fifteen) days of the Dispute Meeting, either Party may refer the Dispute to conciliation or arbitration in accordance with the provisions of Article 27.2 and 27.3below.

27.2. Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Project Engineer, as the case may be, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Project Engineer or without the intervention of the Project Engineer, as the case may be, either Party may require such Dispute to be referred to the State Government, the Principal Secretary to BSWML and the Chairman of the Board of Directors of the Concessionaire for amicable

settlement, and upon such reference, the said persons shall meet no later than [7 (seven)] days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the [7 (seven)] day period or the Dispute is not amicably settled within [15 (fifteen)] days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within [30 (thirty)] days of the notice in writing referred to in Article 27.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 27.3. Arbitration

27.3.1. Procedure

Subject to the provisions of Sub-Clauses 27.1 and 27.2, any Dispute which is not resolved amicably shall be finally settled by reference to arbitration. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi, or such other rules as may be mutually agreed by the parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The expenses of arbitration shall be borne equally by both the Parties.

27.3.2. Arbitration Panel

There shall be a panel of three arbitrators, of whom each Party shall appoint one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi.

27.3.3. Place of Arbitration

The place of arbitration shall ordinarily be within the jurisdiction of Bengaluru City limits but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

27.3.4. Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings. Any party using other than English as language shall supply the other party an authorized transcript of true translation of its submissions into English at its costs and expenses.

27.3.5. Enforcement of Award

(a) The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the

Parties as from the date it is made, and the Concessionaire and BSWML/State Government agree and undertake to carry out such Award without delay subject to the rights of the aggrieved parties to secure relief from any higher forum.

(b) The Concessionaire and BSWML State Government agree that an Award may be enforced against the Concessionaire and/or BSWML/State Government, as the case may be, and their respective assets wherever situated.

(c) This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

27.3. Performance during Dispute

Pending the submission of and/or decision on a Dispute and until the arbitral Award is published, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such Award.

27.4. Adjudication by Regulatory BSWML or Commission

In the event of constitution of a statutory regulatory BSWML or commission with powers to adjudicate upon Disputes between the Concessionaire and BSWML/State Government, all Disputes arising after such constitution shall, instead of reference to arbitration under Article 26.3, be adjudicated upon by such regulatory BSWML or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 28
INSURANCE

28.1. Insurance Cover

28.1.1. The Concessionaire shall, at its cost and expense, purchase and maintain effective from the Compliance Date and during the Concession Period such insurance policies for such maximum sums as are necessary and customary under Financing Documents and Applicable Laws, and/or in accordance with Good Industry Practice (or may in the future become available) on commercially reasonable terms and reasonably required to be maintained consistent with projects and facilities of the size and type of the Project, including but not limited to the following:

(a) Builders‟/Sub-Concessionaires‟ all risk insurance;

(b) Erection insurance and/or break down insurance;

(c) Public liability insurance applicable for the Concession Period, Termination and post- Termination period;

(d) Statutory insurances such as workmen's compensation insurance or any other insurance required by the Applicable Laws;

(e) Comprehensive Third Party liability insurance including injury or death to Persons who may enter the Sites;

(f) Insurance policies related to any of the Concessionaire's obligations hereunder;

(g) Any other insurance that may be considered necessary by BSWML/ State Government/ Lenders of the Concessionaire, if any, to protect the Concessionaire, its employees and its assets (against loss, damage or destruction at replacement value) or otherwise, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to(f).

28.2. Insurance Companies and Costs

28.2.1. The Concessionaire shall insure all insurable Project Assets comprised in the Project;

28.2.2. All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers there under against, *inter-alia*, the State

Government, BSWML, and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.

28.2.3. The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, *inter-alia*, the State Government, BSWML, and its affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible articles in or inadequacy of limits of any such policies of insurance, unless otherwise mentioned in this Agreement.

28.3. Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to the State Government and BSWML copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

28.4. Application of Insurance Proceeds

All money received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution or replacement of the Project or any part thereof, which may have been damaged or destroyed. The Concessionaire shall carry out such repair or renovation or restoration or substitution or replacement to the extent possible in such manner that the Project or any part thereof, shall, after such repair or renovation or restoration or substitution or replacement be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear expected.

28.5. Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policies so as to keep the policies in force and valid throughout the Concession Period and furnish copies of the same to the State Government and BSWML. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) days‟ clear notice of cancellation is provided to the State Government and BSWML in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the State Government or BSWML may at its option purchase and maintain such insurance and all sums

incurred by the State Government or BSWML in this behalf shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the State Government or BSWML by exercising right of set-off or otherwise from the Performance Security.

ARTICLE 29
VARIATION [NOT APPLICABLE}

The project of 1750 TPD C&D waste collection, transportation & processing has proposed payment to Concessionaire on monthly tipping fee basis. The provision of escalation of 5% yearly & WPI revision has been considered in this model.

Therefore, No separate clause of variation is applicable.

ARTICLE 30
INTELLECTUAL PROPERTY AND CONFIDENTIALITY

30.1 Proprietary Material

30.1.1. The property in all designs, drawings, processes, methods, details, plans, concepts, technology, specifications, schedules, programs, reports, calculations, documents and other works relating to the Project, including intellectual property rights therein or thereto, whether registered or not, which have been or are hereafter written, originated, made or generated by the Concessionaire or any of its employees, Sub-Concessionaires, consultants or agents in connection with this Agreement or the design, development, construction, O&M of the Project/Project Facilities/Project Assets, shall be and remain at all times the property of the Concessionaire, vest exclusively in the Concessionaire and ensure to the exclusive benefit of the Concessionaire (the **"Proprietary Material"**).

30.1.2. The Concessionaire, as beneficial owner, hereby grants to BSWML a perpetual non-exclusive license to use such Proprietary Material in connection with the Project, irrevocably and free of cost. Such license shall carry the right to use the Proprietary Material for all purposes connected with the Project; however, it shall not be transferable to a Third Party. Such license shall automatically get extended to BSWML for Project purpose only, and not for Third Party use or transfer, upon the Termination of this Agreement or the discharge by the Concessionaire of its duties hereunder.

30.2 Confidentiality

30.2.1. The Project Engineer/ BSWML/ State Government shall not at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose, transfer, communicate to any Person or use in any manner for any purpose unconnected with the Project any Proprietary Material or other information, material, documents, records or data, concerning the Project, the Concessionaire and the Project Engineer, the State Government, BSWML(including any information concerning the contents of this Agreement) except of its directors, officials, employees, Sub-Concessionaires, consultants, agents or representatives on a need to know basis or as may be required by any law, rule, regulation or any judicial process.

30.2.2. BSWML/State Government shall use such Proprietary Material and information only for the purposes of this Agreement or as otherwise expressly permitted by the Concessionaire in writing.

30.2.3. The Concessionaire shall ensure that all its directors, employees, Sub-Concessionaires, consultants, agents or representatives execute, deliver and comply

with customary confidentiality and non-disclosure agreements reasonably required by BSWML/State Government, have been duly approved by BSWML/ State Government, with respect to the Project.

30.2.4. The aforesaid provisions shall not apply to the following information:-

(i) Obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality; or Already in the public domain otherwise than by breach of this Agreement;

(ii) Disclosed due to a court order or under any Act of GoI/Government of Karnataka or required by Applicable Laws.

30.3 Survival

The Concessionaire and BSWML accept and confirm that the provisions of this Article 29 shall survive the Termination of this Agreement.

ARTICLE 31

ACCOUNTS AND AUDIT

31.1 The Concessionaire shall maintain full accounts of all revenues derived/collected by it from and on account of use of the Project and of O&M expenses and other costs paid out of the Escrow Account and shall provide to BSWML and the State Government copies of the said accounts duly audited and certified by the Concessionaire's Statutory Auditors within 120 (one hundred twenty) days of the close of each Financial Year to which they pertain, during the subsistence of this Agreement. Such audited accounts shall form the basis of various payments by either Party under this Agreement. The Concessionaire shall also furnish, within one week of its publication, certified copies of the audited accounts and annual report published by the Company under the Applicable Laws.

31.2 The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors (the "**Statutory Auditors''**) a firm of Chartered Accountants duly licensed to practice in India out of the mutually agreed list of [10 (ten)] independent and reputable firms of Chartered Accountants in India (the "**List of Chartered Accountants**"). The criteria for preparing the List of Chartered Accountants are set forth in **Schedule 19**. Subject to a 30 (thirty) days‟ notice to BSWML and the State Government and the replacement Statutory Auditors being appointed from the List of Chartered Accountants, the Concessionaire may terminate the appointment of any Statutory Auditor appointed in accordance with this Article. The fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

31.3 On or before the 15th (fifteenth) day of April each year, the Concessionaire shall provide for the preceding Financial Year a statement duly audited by its Statutory Auditors giving summarized information, the revenues derived from the Project and such other information as BSWML and the State Government may reasonably require.

31.4 Notwithstanding anything to the contrary contained in this Agreement, BSWML and the State Government shall have the right but not the obligation to appoint at its cost another firm of Chartered Accountants from the List of Chartered Accountants (the "**Additional Auditor**") to audit and verify all those matters, expense, costs, realisations and things which the Statutory Auditors of the Concessionaire, are required to do, undertake or certify pursuant to this Agreement.

31.5 In the event of there being any difference between the finding of the Additional Auditor, and the certification provided by the Statutory Auditors of the Concessionaire, such Auditors shall meet to resolve such differences and if they are unable to resolve the same such disputed certification shall be resolved by recourse to the Dispute resolution procedure.

ARTICLE 32
MISCELLANEOUS

32.1 Assignment and Charges

32.1.1. The Concessionaire shall not assign in favor of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of BSWML and the State Government.

32.1.2. Restraint set forth in Article 32.1.1 shall not apply to:

(a) liens/ encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;

(b) mortgage/pledge/hypothecation of movable assets/goods purchased by Concessionaire, revenue and receivables received by Concessionaire (excluding Insurance proceeds) in favor of the Lenders for the Project.

Provided, no charge/ mortgage/ lien/ hypothecation or encumbrance of any kind whatsoever can be created or construed as allowed to be created over the Project Assets including the Sites, assets and equipment provided by BSWML for the Project.

Provided further that irrespective of security hereinabove permitted, Concessionaire is irrevocably obligated to procure release of such security and hand over to BSWML, upon Termination of this Agreement, their respective Project Assets free of all Encumbrances whatsoever.

32.1.3. The Concessionaire shall not create nor permit to subsist any further Encumbrance over the Sites.

32.2 Interest and Right of Set-Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at prevailing PLR of State Bank of India per annum from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that

may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set-off.

Provided the stipulation regarding interest for delayed payments contained in this Article 32.2 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

32.3 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts in the State of Karnataka shall have jurisdiction over all matters arising out of or relating to this Agreement.

Waiver

Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

32.4 Survival

(a) Termination of this Agreement shall not relieve the Concessionaire or BSWML/State Government of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and except as otherwise provided in any provision of this Agreement expressly limiting the liability of any Party, shall not relieve any Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

(b) Termination shall:

(i) not relieve the Concessionaire or BSWML/State Government, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

(ii) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

All obligations surviving Termination shall only survive for a period of [3 (three) years] following the date of such Termination.

32.5 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses as specified below or such address, email address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered:

(a) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address, and

(b) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

32.6 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the

Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to Dispute Resolution under this Agreement or otherwise.

32.7 No Partnership

Nothing contained in this Agreement shall be construed or interpreted to create an association, joint venture or partnership between the Parties. Neither Party shall have any BSWML to bind the other in any manner whatsoever.

32.8 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language and true translation into English language if other than English is used at the costs and expenses of the Party sending such communication, notice, documentation and proceedings.

32.9 Counterparts

This Agreement may be executed in [6 (six)] counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

Liability for Review

Except to the extent expressly provided in this Agreement:

(a) no review, comment, certification, verification or approval by BSWML or State Government, of any Project Agreement, design, detailed engineering, or document, accounts, invoice, etc., submitted by the Concessionaire nor any observation, testing, certification, validation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe, test or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Approvals; and

(b) the State Government, BSWML, their advisors or shall not be liable to the Concessionaire by reason of any review, comment, approval observation, testing, certification, verification, validation or inspection referred to in Sub-Clause (a)above.

32.10 Unforeseen Event

Any event or condition that has not been explicitly covered under the provisions of this Agreement shall be resolved after discussion and mutual agreement between the Parties.

32.11 Liability and Indemnification

(a) The Concessionaire shall indemnify, defend and hold harmless (the "**Indemnifying Party**") BSWML and the State Government(the "**Indemnified Parties**") during the Concession Period from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgments, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any Third Party liability, including reasonable attorneys‟ fees, actually incurred or suffered by the Indemnified Parties, arising out of or in any way connected with (i) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Indemnifying Party or Persons claiming through or under it or due to such Party‟s representations and warranties herein; covenants, agreements or obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (ii) failure of the Indemnifying Party or Persons claiming through or under it to comply with Applicable Laws or the Applicable Permits or to pay taxes or make contractual or other payments due and payable to any Person; (iii) the employment, sickness, injury or death of any Person employed directly or indirectly by the Indemnifying Party or Persons claiming through or under it ;or(iv) as provided elsewhere herein.

(b) The Concessionaire shall be responsible for executing, performing its obligationshereunderinaccordancewiththeprovisionsofthisAgreementatitsrisk and consequence and shall be responsible for any liability whatsoever arising under, in connection with or in relation to the discharge of obligations hereunder by the Concessionaire or Persons claiming through or under it and shall indemnify, keep indemnified and hold BSWML and the State Government and its advisors harmless in this behalf.

(c) BSWML and the State Government shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, consequential financial or economic loss or any disruption in the flow of C&D into the Project for any reason whatsoever.

(d) The Concessionaire shall keep BSWML and the State Government indemnified during the Concession Period against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Government BSWML, including the CPCB or the SPCB, and Third Parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the Sites or in the employment of labor and personnel at the Project. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Technical Specifications and the Applicable Laws even after the Termination of this Agreement by efflux of time or otherwise.

(e) Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements till the Termination Date.

(f) The provisions of this Article 32.15 shall survive the Termination of this Agreement.

32.12 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by BSWML or the State Government or the Independent Expert of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

(b) BSWML and the State Government shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-Article (a) above.

32.13 Reservation of Rights

No forbearance, indulgence, relaxation or inaction by the Concessionaire at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of BSWML or the State Government to require performance of that provision, and no delay in exercising or omitting to exercise any right, power or remedy accruing to BSWML or the State Government upon any default or otherwise under this Agreement shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of BSWML or the State Government in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of BSWML or the State Government in respect of any other default.

32.14 Third Parties

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of BSWML Related Parties, the State Government Related Parties, the Concessionaire Related Parties and the Lenders, and shall not imply or create any rights on the part of, or obligations to, any other Person.

32.15 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the RFP, shall be deemed to form part of this Agreement and treated as such.

ARTICLE 33

DEFINITIONS

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

1. **"Access Road"** means a motorable approach road required to be built (if any) for providing access to the Site(s) to the Concessionaire;

2. **"Additional Cost"** means the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire is required to incur, post the Compliance Date, on account of Change in Law;

3. **"Additional Performance Security** "means the performance security that must be submitted by the Selected Bidder to BSWML**,** together with the Performance Security and ESHS Performance Security to secure the obligations of the Concessionaire/Bidder in accordance with the requirements of this Agreement;

4. **"Adjoining Property"** means any land and/or property adjoining or adjacent or any part of the Site, including all conduits, roads, footpaths, walls, fences, buildings and other erections, structures and other apparatus on, under or within such land and/or property.

5. **"Adjusted DG Set Units"** has the meaning ascribed to it in Article 17.1.6(g)(B)(II).

6. **"Adjusted Equity"** means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the "**Reference Date**"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI) applicable to „All Commodities" announced by Government of India, and for any Reference Date occurring:

   (a) on or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Compliance Date and the Reference Date;

   (b) from Commercial Operation Date (COD) and until the 5th (fifth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "Base Adjusted Equity") and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in

WPI occurring between COD and the Reference Date;

(c) after the 5th (fifth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point three three percent) thereof at the commencement of each month following the 5th (fifth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

(d) For the avoidance of doubt, the Adjusted Equity shall, in the event of Concession Period, be computed as on the Reference Date immediately preceding the Concession Period Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

7. **"Affected Party"** means the Party claiming to be affected by a Force Majeure Event in accordance with Article 20;

8. **"Agreement"** or **"Concession Agreement"** means this agreement executed between the State Government, BSWML and the Concessionaire including its Schedules and annexures and includes any amendments made thereto in accordance with the provisions hereof;

9. **"Applicable Law"** means all laws, acts, ordinances, rules, regulations notifications and guidelines in force and effect, including *inter-alia* the the Environment Protection Act, 1986, C&D Management Rules, 2016, the Construction and Demolition Waste Management Rules, 2016, the Plastic Waste Management Rules, 2016, the E-Waste Management Rules, 2016, the Hazardous Waste Management Rules, 2016, Guidelines for Disposal of C&D, 2019 by CPCB and CPHEEO Manual on Municipal C&D Management, 2016, National Building Code, ISO standards and BIS standards, and shall also include judgments, decrees, injunctions, writs or orders of any court of record as may be in force and effect as of the date hereof and shall include any amendment or re-enactment thereof from time to time, having jurisdiction over any Party, this Agreement, the Project, the Project Agreements and each document, instrument and agreement delivered hereunder or in connection herewith;

10. **"Applicable Permits"** means all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required under Applicable Laws, at its respective cost, to be procured by the Concessionaire in connection with the implementation of the Project;

11. **"Article"** means an article of this Agreement.

12. **"Associate"** means, in relation to the Concessionaire, [the Selected Bidder or a

member of the Selected Bidder], a person who controls, or is controlled by, or is under the common control of the same person who controls the concessionaire, the selected bidder or member of the selected bidder, as the case may be.

13. **"BSWML Event of Default"** shall have the meaning assigned thereto in Article 23;

14. **"BSWML's Representative** "means any officer nominated by BSWML, from time to time, to act on its behalf and liaise with the Concessionaire and the State Government for the purposes of this Agreement and notified as such in writing to the Concessionaire and the State Government.

15. **"Availability"** means the availability of the Project Facilities to collect, transport, process and dispose of C&D, as determined in accordance with Articles 19.1.1(a), 19.1.2(a) and 19.1.3(a).

16. **"Availability Liquidated Damages"** means the liquidated damages payable by the Concessionaire to BSWML for failure to achieve the Guaranteed Availability, in accordance with Article 19.2.1.

17. **"C&D"** shall hold the meaning ascribed to it under the Guidelines on C&D Management on Old Municipal Dumpsites, 2019.

18. **"C&T"** or **"Collection and Transportation"** refers to primary and secondary collection and transportation of C&D from the Project Area to the Processing Facility/ Sanitary Landfill;

19. **"Change in Law"** shall have the meaning assigned thereto in Article 23**;**

20. **"Clause"** means a clause of this Concession Agreement.

21. **"Compliance Date"** means the later of the date by which the Condition Precedent of the Parties under Article 4are achieved or waived;

22. **"Compliance Period"** shall have the meaning assigned thereto in Article 4.2.1;

23. **"Concession"** shall have the meaning as assigned thereto in Article 3.1.1;

24. **"Concessionaire Event of Default"** shall have the meaning assigned thereto in Article 4;

25. **"Conditions Precedent"** means conditions to be satisfied before commencement of

the Project as specified in Article 4;

26. **"Commercial Operations Date"** or **"COD"** means the date when the Concessionaire begins commercial operations of the Processing Facility pursuant to issuance of Completion Certificate by BSWML;

27. **"Commencement Date"** shall have the meaning as assigned to it in Article 5.1;

28. **"Completion Certificate(s)"** shall refer to the Certificate to be issued by BSWML/Project Engineer as set out in Schedule 15, upon successful commissioning and functioning of the Processing Facility;

29. **"Concessionaire's Representative"** means the Person nominated by the Concessionaire, from time to time, to act on its behalf and liaise with the State Government and BSWML for the purposes of this Agreement and notified as such in writing to the State Government and BSWML.

30. **"Conditions Precedent"** means collectively, the obligations of the Concessionaire that are set out at Article 4, the obligations of the State Government and BSWML that are set out at Article 6 and '**Condition Precedent**' means any one of these.

31. **"Construction & Demolition (C&D) Debris" or "Debris"** means SWM resulting from construction, re-modelling, repair, renovation or demolition of Structures or from land clearing activities. "**Structures**" for the purposes of this definition means buildings of all types (both residential and non-residential), utilities, infrastructure facilities and any other type of man-made structure. "**Debris"** includes, but is not limited to bricks, concrete rubble and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, roofing, waterproofing material and other roof coverings, asphalt pavement, glass, plastics, paper, gypsum boards, electrical wiring and components containing no hazardous materials, pipes, steel, aluminium and other non-hazardous metals used in construction of structures;

~~32. **"Construction Payment"** means the payments to be made to the Concessionaire during the Construction Period, upon satisfactory completion of the Payment Milestones, which shall, in aggregate, be equivalent to 45% of the Bid Project Cost, as adjusted from time to time to reflect the variation in the Construction Price Index.~~

~~33. **"Construction Price Index"** shall comprise: (a) 70% of WPI; and (b) 30% of CPI(IW),which constituents may be substituted by such alternative index or indices as the Parties may mutually agree;~~

34. **"Concessionaire" or "Sub-Concessionaire"** means any Person with whom the Concessionaire has entered into/may enter into any material contract in relation to the Project;

35. **"Cost"** means all documented expenditure reasonably incurred by the Concessionaire, whether on or off the Site, including overhead and similar charges, but does not include profit.

36. **"CPCB"** means the Central Pollution Control Board of the Government of India;

37. **"CPI (IW)"**means the Consumer Price Index for Industrial Workers published by the Labour Bureau, GoI and shall include any index which substitutes the CPI(IW), and any reference to CPI(IW) shall, unless the context otherwise requires, be construed as a reference to the CPI(IW) published on the last date of the preceding quarter;

38. **"Daily Weight Sheet"** shall have the meaning assigned thereto in Schedule 16;

39. **"Dead Remains"** means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants)**;**

40. **"Debt Due"** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Termination Date:

(a) the principal amount of the debt provided by Lenders under the Financing Agreements for financing the Bid Project Cost (the "**principal**") but excluding any part of the principal that had fallen due for repayment 6 (six) months prior to the Termination Date;

(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Termination Date but excluding (i) any interest, fees or charges that had fallen due 3 (three) months prior to the Termination Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to BSWML Default or State Government Default; and

(c) any Subordinated Debt which is included in the Financial Package disbursed by lenders for financing the Bid Project Cost; provided that if all or any part of the Debt Due is convertible into equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal shall be dealt with as if such conversion had not been undertaken. For the Purposes of this Agreement, the term "Subordinated Debt" shall mean the debt provided by lenders or the Concessionaire's shareholders for meeting the Bid Project Cost and shall be subordinate to the financial assistance provided by Senior Lenders.

41. **"Debt Service"** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in a Financial Year to the Lenders under the Financing Agreements;

42. **"Design and Drawings"** means: (a) the Basic Engineering Designs; (b) the Screening Report and (c) the detailed 'good for construction' designs and drawings, technical information, plans, samples, patterns, models and specifications for the works required for achieving the first Payment Milestone.

43. **"Designated Bins"** means the collection bins placed by the Concessionaire at locations recommended by the Concessionaire and approved by BSWML for receiving the Primary Collection & Transportation of C&D within the Project Area;

44. **"Disposal** "means the final and safe disposal of post processed residual C&D and inert street sweepings and silt from surface drains on land as specified in Schedule I of the SWM Rules 2016 to prevent contamination of groundwater, surface water, ambient air, and attraction of animals and birds;

45. **"Dispute"** shall have the meaning assigned thereto in Article 26hereof;

46. **"Dispute Resolution Procedure"** means the procedure for resolution of disputes as set forth in Article 26;

47. **"Dumpsite"** means a land utilised by BSWML for disposal of C&D without following the principles of sanitary land filling;

48. **"EIA"** means the Environment Impact Assessment for the Project;

49. **"Emergency"** means conditions or situation that is likely to endanger the safety of the individuals on or about the Project or which poses an immediate threat of material

damage to the Project;

50. **"Encumbrances"** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including encroachments on the Site;

51. **"Engineered Sanitary Landfill Site"** or **"Sanitary Landfill Site" or "Sanitary Landfill" or "SLF"** means the Sanitary Landfill Site to be developed, constructed and operated by the Concessionaire at the allocated site in conformance with the terms of this Agreement for disposal of residual inert matter and rejected waste; and the site where the concessionaire conducts a final and safe disposal of residual inert matter, residual C&D and inert waste, which is designed with protective measures against pollution of ground water, surface water and fugitive air dust, wind-blown litter, bad odour, fire hazard, animal menace, bird menace, pests or rodents, green-house gas emissions, persistent organic pollutants slope instability and erosion in accordance with the terms of this Agreement;

52. **"Equity"** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments which has converted into equity share capital of the Company;

53. **"Event of Default"** shall have the meaning assigned thereto in Article 24;

54. **"Escrow Account"** means the interest-bearing account opened by State Government with the Escrow Bank in accordance with the Escrow Agreement, which shall be operational until the expiry of the Concession Period.

55. **"Escrow Bank"** means the Scheduled Bank with which State Government opens the Escrow Account, pursuant to the Escrow Agreement;

56. **"Escrow Agreement**" means the agreement to be executed among the State Government, BSWML, the Concessionaire, and the Escrow Bank in relation to the opening and operations of the Escrow Account, in the form set out at Schedule 17;

57. **"Excluded Waste"** means waste material of the nature that the Project is not designed or authorised to receive, manage, process and dispose which includes (i) Hazardous Waste,
(ii) Bio-Medical Waste (iii) Dead Remains, (iv) E- Waste and (v) construction and demolition waste;

58. **"Execution Date"** means the date of signing of the Concession Agreement;

59. **"Event of Default** "means the State Government Event of Default, BSWML Event of Default or a Concessionaire Event of Default, as the context may require.

60. **"Facility"** means any establishment wherein the C&D management processes namely segregation, recovery, storage, collection, recycling, processing, treatment, or safe disposal are carried out

61. **"Financing Agreements" or** "**Financing Documents"** means collectively the agreements entered into for providing the debt financing for the implementation of the Project and shall include the security documents creating the relevant security (such as mortgages or charges or liens) on the Project or any part thereof in line with this Agreement, for securing the debt provided for funding the Bid Project Cost;

62. **"Financial Assistance** "means all funded and non-funded financial assistance, including loans, advances and guarantees or any re-financing that the Concessionaire may avail of for the Project from the Lenders;

63. **"Financial Close** "means, the date on which the Financing Documents become effective, the conditions precedent under the Financing Documents for disbursements are fulfilled and the Concessionaire has access to the Financial Assistance;

64. "**Financial Default** means occurrence of breach of the terms and conditions of the Financing Agreements or continuous default in Debt service by the Concessionaire for period of 3 (three) months;

65. "**Financial Model**" means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues there from on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

66. **"Financial Package"** means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all Financial Assistance specified in the Financing Agreements, Subordinated Debt, if any;

67. **"Financial Year"** shall mean a year commencing on 1st April of a calendar year and

ending on 31st March of the immediately succeeding calendar year;

68. **"Force Majeure"** or **"Force Majeure Event"** means an act, event, condition or occurrence as specified in Article 20;

69. **"Fundamental Change in Law"** means any Change in Law that:

(a) renders unenforceable, illegal, invalid or void any material right or material obligation of the Concessionaire under this Agreement; or

(b) renders a material part of this Agreement invalid, illegal or unenforceable; or

(c) results in the Concessionaire being deprived of the whole or a substantial part of the benefit of this Agreement.

70. **"GoI"** means the Government of India;

71. "**Good Industry Practice"** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, C&D or supervision or monitoring thereof or any of them or facilities similar to the Project Facilities;

72. **"Government Agency"** means GoI, Government of Karnataka, PLBs, BSWML or any Governmental Department, Commission, Board, Body, Bureau, Agency, BSWML, Instrumentality, Court or Other Judicial or Administrative body, Central, State, or local, having Jurisdiction over the Concessionaire, the Site/Project or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

73. **"Grace Period"** shall mean as defined in Article 14.11.5;

74. **"Guaranteed Energy Consumption"** means the maximum number of units of power (in kWh) per ton quoted by the Selected Bidder in the Financial Proposal, which it expects to consume during the Construction and Processing period [(other than any units expected to be generated and consumed from the Power Plant)], to operate and maintain the Project, at varying volumes and compositions of C&D. The Guaranteed Energy Consumption for any quarter during the Construction and Processing period will be determined on the basis of the number of units of power (in kWh) per ton quoted by the Selected Bidder in the Financial Proposal for the average volume and composition of waste processed and disposed at the Site(s) in such quarter (such average to be calculated in accordance with the KPI Adherence Report).

75. **"Hand-back Conditions"** mean the condition in which the Site, the Facilities, and the Power Plant, if any, shall be handed back to BSWML or any entity nominated by BSWML on expiry or early termination of this Agreement, which is consistent with

the due performance of the Concessionaire's obligations under this Agreement.

76. **"Hand-back Requirement"** means the obligations of the Concessionaire in relation to transfer of the Facilities upon expiry or early termination of the Project, as set out in Article 24.4.11;

77. **"Hazardous Waste"** shall have the meaning as defined under the Hazardous Wastes Management Rules, 2016 and as amended thereto;

78. **"ICT Infrastructure"** shall mean all Information & Communication Technology Infrastructure, equipment and systems (including software, hardware, firmware, networks and websites) including but not limited to sensors, geographical positioning systems, cameras, electronic weigh bridges and associated software, to facilitate the functioning of the project on day to day basis;

79. **"Intellectual Property Rights"** means patents, copyrights, database rights, design rights, trade-marks, service marks, trade names, domain names, rights in reputation, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions, whether patentable or not), and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world;

80. **"Invoice** "means an invoice for payment of: (a) the Construction Payments during the Construction Period; or (b) the Capex Annuity (along with interest), the C&D Charges and the Power Charges during the Construction and Processing period, submitted by the Concessionaire to BSWML (with a copy to the State Government) in accordance with Article 17;

81. **"KPI Adherence Report"** shall have the meaning ascribed to it under Article 19.3.2(c);

82. **"KPI"** means the key performance indicators set out in Article 18, which the Project must achieve during the Construction Period and the Construction and Processing period.

83. **"C&D"** shall have the meaning as provided under the CPCB Guidelines for Disposal of C&D, 2019;

84. **"Lenders" or "Senior Lenders"** means any person, financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided loans for financing the Bid Project Cost as evidenced in Financing Documents;

85. **"Letter of Award'' or "LOA**" means the letter no. [•] dated [•], issued by BSWML to the Selected Bidder for developing the Project in terms of this Agreement;

86. **"Liquidated Damages"** means the Delay Liquidated

87. Damages, the Availability Liquidated Damages, the Performance Liquidated Damages and the Power Consumption Liquidated Damages.

88. **"MNRE"** means Ministry of New & Renewable Energy, GoI;

89. **"Material Adverse Effect"** means a material adverse effect of any act or event on the ability of any Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to any or all Party (ies);

90. "**Material Breach**" means a breach by any Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;

91. **"Material Recovery Facility"** means a facility where non-compostable C&D can be temporarily stored by BSWML or any other entity mentioned in Rule 2 of the SWM Rules 2016 or any person or agency authorised by any of them to facilitate segregation, sorting and recovery of recyclables from various components of waste by authorised informal sector of waste pickers, informal recyclers or any other workforce engaged by BSWML or entity mentioned in Rule 2 of the SWM Rules 2016 for the purpose before the waste is delivered or taken up for its processing or disposal;

92. **"Minor Casualty"** means any fire or other casualty that results in physical damage to the Project Facilities to the extent that the total cost (as estimated by the Project Engineer) of repairing and/or replacing the damaged portion of the Project Facilities as the case may be, to the same condition as previously existed would not exceed the amount of [INR 25, 00,000 (Rupees twenty five lakhs)].

93. "**Nominated Company** means the entity that is selected either by the Lenders or by BSWML/State Government For substituting the Concessionaire, upon occurrence of Concessionaire's Event of Default, in terms of the provisions of the Agreement and the Substitution Agreement;

94. "**Operational Plan**" means a comprehensive plan with location of Designated Bins, their pickup schedule, vehicle planning & scheduling for Secondary Collection and Transportation of C&D in the Project Area, as prepared by the Concessionaire and approved by BSWML and the State Government;

95. **"O&M" mean Operation & Maintenance**;

96. **"C&D Charges** "means the amount required by the Concessionaire per quarter to Collect, Process and Transport the waste from identified locations during the Project, excluding the Power Charges, during the Construction and Processing period. The C&D charges for the first quarter after the COD will be determined on the basis of the C&D charges quoted by the Selected Bidder (in the Financial Proposal) for the first month from the COD, which amount shall then be adjusted to reflect the variation in the C&D Price Index.

97. **"C&D Expenses' ' means** the expenses incurred in the C&D of the Project and includes all matters connected with or incidental to such C&D, provision of services and facilities in accordance with the provisions of this Agreement. For the avoidance of doubt, fees and expenses payable to the Escrow Bank shall form part of the C&D Expenses.

98. **"C&D Manual '' means** the manual, required to be prepared by the Concessionaire and approved by BSWML and the State Government for the C&D of the Project in accordance with Article 16.

99. **"C&D Payments"** means, collectively the: (a) Capex Annuity; (b) interest on the reducing balance of [55% (fifty five per cent)] of the completion cost; (c) C&D Charges; and (d) Power Charges (subject to the cap of the Power Charges based on the Project Guaranteed Energy Consumption), to be paid by BSWML and the State Government to the Concessionaire during the Construction and Processing period, in accordance with this Agreement.

100. **"Construction and Processing period"** means the period commencing from the COD and ending on the Termination Date, during which the Concessionaire is required to operate and maintain the Project.

101. **"C&D Price Index"** shall comprise: (a) 70% of CPI(IW); and (b) 30% of WPI, which constituents may be substituted by such alternative index or indices as the Parties may mutually agree;

102. **"C&D Security"** has the meaning ascribed to it in Article 9;

103. **"Organic Waste"** means such type of C&D that can be degraded by micro-organisms, but shall not include excluded wastes;

104. {"**Participating Local Bodies**" or "**PLBs**" means the under mentioned local bodies:

(a) Municipal Corporation of *** ("PLB1")

(b) Municipal Council of ***(“PLB2”)

(c) *** Gram Panchayat (“PLB 3”)}

105. **“Payment Milestone”** means the milestones listed in Article 14 for release of the Construction Payments to the Concessionaire, and „Payment Milestone“ shall mean any one of them, as the context may require;

106. **“P&D” or “Processing & Disposal”** refers to Processing & Disposal of C&D collected from the Project Area, as is more clearly defined in SWM Rules, 2016;

107. **“Performance Security”** means the guarantee for performance of its obligations as per terms of this Agreement, to be furnished by the Successful Bidder (or the Concessionaire), in accordance with Article 9 in the format given at Schedule 6;

108. **“Person”** means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, society, unincorporated organization, government or government body or any other legal entity;

109. **“Post-COD Period”** means the period starting on and from the COD and ending on the Termination Date;

110. **“Power Charges”** means the cost of the power consumed by the Concessionaire to operate and maintain the Project during the Construction and Processing period, which will be calculated on the basis of the prevailing Power Unit Rate, the Fuel Price, to the extent applicable and such other applicable charges as per the guidelines of the relevant Government Authorities.

111. **“Power Outage”** means any interruption in the supply of electricity from the grid or any Diesel-Generators (DG) Sets maintained by the Concessionaire at the Sites, which disrupts the continuous operation of the Project.

112. **“Power Unit Rate”** means the cost per unit of power drawn from the grid (through the relevant distribution licensee for the Sites), which will be the prevailing tariff per unit of power charged by the relevant distribution licensee in the relevant month during the Construction and Processing period.

113. **"Pre-COD Period"** means the period commencing from the Execution Date and extending up to the COD;

114. “**Preliminary Notice”** means the notice of intended Concession Period by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default;

115. **"Price Index** "means, for the Construction Payments, the Construction Price Index, and for the C&D Payments, the C&D Price Index.

116. **"Price Index Multiple"** means, the variation multiple in the Price Index occurring between the Reference Index Date preceding the Proposal Due Date and the Reference Index Date preceding the date of the Invoice, which is calculated by dividing the Price Index on the Reference Index Date preceding the date of the Invoice by the Price Index on the Reference Index Date preceding the Proposal Due Date.

For the avoidance of doubt and by way of illustration, if (a) the Price Index on the Reference Index Date preceding the Proposal Due Date, say 30 May, 2018, is 200; (b) the Invoice is submitted on 15 April, 2020; and (c) the Price Index as on 31 March, 2020 is 210, then the Price Index Multiple for determination of the amount due in respect of such Invoice shall be 1.05.

117. **"Primary Collection and Transportation** "means the door to door collection, collection from public spaces, street cleaning and delivering to the to the Designated Bins at the designated collection points;

118. **"Processing"** means any scientific process by which segregated C&D is handled for the purpose of reuse, recycling or transformation into new products

119. **"Processing Facility"** means the facility created by the Concessionaire for processing of the C&D, prior to its final disposal at engineered Sanitary Landfill Site, and also includes a [refuse-derived fuel (RDF), bio-methanation, incineration] or any other approved technology for waste processing or any combination thereof;

120. **"Project"** shall mean the Construction, processing and disposal of C&D from Waste Generators in the Project Area and Construction & DemolitionC&D at Municipal Dumpsite and discharging the Scope of Services more specifically set out in Schedule 1;

121. **"Project Agreements"** means any material contracts or agreements entered into by the Concessionaire after the date of this Agreement relating to the construction, C&D of the Project;

122. **"Project Area"** means the area presently under boundaries of BSWML or any extension thereof during the Concession Period;

123. **"Project Assets"** means all physical and other assets relating to and forming part of the Project including (a) rights over the Sites and Secondary Collection Points in the form of or license rights, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including but not limited to foundations, buildings, complaint redressal centre, Processing Facility, electrical systems, communication systems, transport vehicles, Designated Bins, ICT Infrastructure and administrative office; (c) Project Facilities situated on the Sites and Secondary Collection Points; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorizations relating to or in respect of the Project;

124. **"Project Facilities"** means all the amenities and facilities required as basic and support infrastructure for implementation of the Project including construction/renovation, C&D of facilities for Construction & Demolition C&D and the integrated C&D management system such as infrastructure, collection and transportation vehicles, ICT infrastructure, machinery and equipment procured, inherited, installed and operated and all other Project related physical assets**;**

125. **"Project Engineer"** means the unit set up by the State Government and BSWML as specified in Article 13 to monitor and supervise the activities of the Concessionaire;

126. **"Proposed Technology"** means the proven technology (ies) proposed to be used by the Concessionaire to develop the Project and Project Facilities, as specified by the Concessionaire in its Designs and Drawings.

127. **"Proprietary Material"** shall be as defined in Article 30.1;

128. **"Qualifying Change in Law"** means any Change in Law, which:
   (a) is directly applicable to the Project;
   (b) impacts the Cost or time for undertaking the Project; and
   (c) which was not reasonably foreseeable by the Concessionaire as on the Bid Due Date.

129. **"Reference Index Date"** means, in respect of the specified month, that last day of the preceding month with reference to which the Price Index or CPI (IW), as the case may be, is revised.

130. **"Related Parties"**:

"Concessionaire Related Parties" means any of the following:

   (a) the Selected Bidder or Associates of the Selected Bidder;
   (b) an officer, servant, employee or agent of the Concessionaire acting in that capacity;
   (c) any Sub Concessionaire engaged by the Concessionaire and their directors, officers, servants, employees or agents acting in that capacity; or

(d) any Person acting on behalf of the Concessionaire.

"BSWML Related Parties" means any of the following:

(a) an officer, servant, employee or agent of BSWML, acting in that capacity;
(b) any Concessionaire or sub Concessionaire of BSWML and their directors, officers, servants, employees or agents, acting in that capacity; or
(c) any Person acting on behalf of BSWML.

For the avoidance of doubt, 'BSWML Related Parties' does not include the Concessionaire or the State Government.

"State Government Related Parties "means any of the following:

(a) an officer, servant, employee or agent of the State Government, acting in that capacity;
(b) any Concessionaire or sub Concessionaire of the State Government and their directors, officers, servants, employees or agents, acting in that capacity; or
(c) any Person acting on behalf of the State Government.

For the avoidance of doubt, 'the State Government Related Parties' does not include the Concessionaire or BSWML.

131. **"Residual Inert Matter"** means the inert matter left for final disposal in engineered Sanitary Landfill Site after processing of the C&D by one or more of the relevant Project;

132. **"Residual C&D"** means and includes the waste and rejects from the C&D which are not suitable for recycling or further processing;

133. "**Right of Way**" means the constructive possession of the Sites, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, C&D of the Project, in accordance with this Agreement;

134. **"Schedules"** means any of the annexure, appendices, supplements or documents annexed to this Agreement and as amended from time to time;

135. **"Sanitary Landfill" or " SLF"** means the site/s where the Concessionaire conducts a final and safe disposal of residual inert matter, residual C&D and inert waste, which is designed with protective measures against pollution of groundwater, surface water and fugitive air dust, wind-blown litter, bad odour, fire hazard, animal menace, bird menace, pests or rodents, green-house gas emissions, persistent organic pollutants slope instability and erosion in accordance with the terms of this Agreement;

136. **"Scheduled Construction Completion Date** "means the date which is 24 (twenty four) months from the Execution Date, by which the Concessionaire is required to complete bio- remediation of C&D on the designated dumpsites and the construction of the Project Facilities.

137. **"Scheduled Maintenance** "means a planned maintenance of the Project that:
(a) has been scheduled and allowed by BSWML in accordance with the Scheduled Maintenance Programme; and
(b) is for inspection, testing, preventive and corrective maintenance, repairs, replacement or improvement of such Facilities, as the case may be;

138. **Scheduled Maintenance Programme** means, for each year of the Construction and Processing period, the schedule for undertaking preventive and corrective maintenance of the Project, as prepared by the Concessionaire and approved by BSWML in accordance with Article 15;

139. **Scheduled Payment Milestone Completion Date** means the scheduled date of completion of the construction work corresponding to the relevant Payment Milestone.

140. **"Screening Report"** means the environmental and social design safeguards screening report prepared by the Concessionaire and submitted to BSWML for its review as part of the Designs and Drawings;

141. **"SEB"** means Karnataka State Electricity Board;

142. **"Secondary Collection and Transportation"** means the transportation of C&D from the secondary collection points and Designated Bins in the Project Area to the Processing Project Facility/ Sanitary Landfill, by the Concessionaire;

143. **"Secondary Collection Points"** means Designated Bins and other collection points, areas of any land, constructed space allocated by BSWML, if any, in consultation with the Concessionaire to temporarily store the C&D collected;

144. **"Selected Bidder" or "Successful Bidder"** means the Entity selected by BSWML through a competitive bidding process for implementing and managing the Project;

145. **"SERC"** means Karnataka State Electricity Regulatory Commission;

146. "**Site**" means the identified land parcel, in respect of which the Concessionaire shall be granted License in accordance with terms hereof, for undertaking development/construction of Processing Facilities, Sanitary Landfill sites;

147. **"C&D" generation of Biological Compressed Natural gas to be generated by treating the** Source Segregated Organic Waste (C&D WASTE) generated from domestic waste, commercial waste, institutional waste, catering and market waste and other non-residential wastes, horticulture waste, agriculture and dairy waste, in the area under the local authorities and other entities mentioned under Rule 2 of the SWM Rules 2016;;

148. **"SPCB"** means State Pollution Control Board particularly Karnataka State Pollution Control Board;

149. **"State Government Representative"** means any officer nominated by the State Government, from time to time, to act on its behalf and liaise with the Concessionaire and BSWML for the purposes of this Agreement and notified as such in writing to the Concessionaire and BSWML;

150. **"Subordinated Debt"** the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

(a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Bid Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

(b) all accrued interest on the debt referred to in sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to [5% (five per cent)] above the bank rate in case of loans denominated in Indian Rupees and lesser of the actual interest rate and [6 (six) month] LIBOR (London Inter-Bank Offer Rate) plus [2% (two per cent)] in case of loans denominated in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

151. **"Substitution Agreement"** is an agreement that may be executed between the Concessionaire, the State Government, BSWML and the Lenders in the form set out in Schedule 9, pursuant to which, in case of Default by the Concessionaire including any Financial Default, Lenders (through its nominee) shall be allowed to take charge of the Concessionaire's roles and responsibilities under this Agreement;

152. **"Supplementary Fuel"** means any fuel that can be used as a supplement to the C&D to enrich RDF / fuel during commissioning / start of activities. Use of supplementary fuel would be permissible as per MNRE guidelines;

153. "**SWM Rules"** means the C&D Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments / modifications thereto or re- enactments thereof, from time to time;

154. **"Taxes"** means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, goods and service tax, value added tax, service tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire or the sub-Concessionaires and the term **Tax** shall be construed accordingly;

155. **"Technology Performance Security"** has the meaning ascribed to it in Article 9.11;

156. **"Termination"** shall mean the expiry or termination of this Agreement and the Concession hereunder;

157. **"Termination Compensation"** means the compensation payable by the State Government and BSWML upon termination of this Agreement, in accordance with Article 24;

158. **"Termination Date"** means the date specified in the Termination Notice as the date on which the Concession Agreement expires or terminates earlier;

159. **"Termination Notice"** means the notice of Termination by any of the Parties to the other Party, in accordance with the applicable provisions of this Agreement;

160. **"Termination Payments"** means the payments payable pursuant to Articles 20 and 23 of this Agreement;

161. **"Third Party"** means any Person other than the Parties to this Agreement;

162. **"Tests"** means the tests to be carried out by the Concessionaire at its cost, in the presence of Project Engineer as may be required for getting Statutory clearances / Approval or asked by Project Engineer in respect of the Processing Project Facility and SLF to ensure that the same confirms to the requirements as per Good Industry Practice and Applicable Law or Applicable Permits;

163. **"Total Casualty"** means any fire or other casualty that results in physical damage to the Project Facilities, to the extent that the total cost of repairing, replacing or restoring the damaged portion of the Project Facilities (as determined by the Project Engineer), to the same condition as existed previously, would be more than 25% (twenty five per cent) of the total replacement cost of the Facilities.

164. **"Transfer Date"** shall be as defined in Article 24.4.9;

165. **"Transportation** "means conveyance of C&D, either treated, partly treated or untreated from a location to another location in an environmentally sound manner through specially designed and covered transport system so as to prevent the foul odor, littering and unsightly conditions;

166. **"Trial Operations** "means the operation of the Project Facilities on a trial basis for a period of 3 (three) months from the Construction Completion Date or such longer period as may be determined;

167. **"Trial Operations Completion Certificate"** means the certificate issued by BSWML to the Concessionaire upon successful completion of the Trial Operations;

168. **"Unscheduled Outage** "means an interruption of or a reduction in the Availability of any Facilities that is not the result of a Forced Unavailability.

169. **"Vacant Possession"** means delivery of possession of the Site free from all Encumbrances to BSWML and the grant of all rights and all other rights appurtenant thereto within the scope of this Agreement;

170. **"Variation** "means any alteration in the Scope of Work, technical specifications or the Designs and Drawings, as instructed by BSWML or the State Government or proposed by the Concessionaire, in accordance with Article 28;

171. **"Variation Order** "means an order issued by BSWML or the State Government certifying its approval of a proposed Variation and recording the terms and condition on which the proposed Variation is required to be implemented;

172. **"Waste Generators"** means all residential, commercial, institutional and industrial establishments generating C&D and located within the Project Area;

173. **"Waste to Energy"** means all activities, processes and technologies of converting C&D into Electricity for commercial use or any form of converting any waste into any form of energy that meet the norms specified by the Ministry of the Renewable Energy;

174. **"Willful Misconduct** "means an intentional or reckless breach or disregard by a Party of any of its obligations under this Agreement.

175. **"WPI"** means the Wholesale Price Index for all commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

In witness whereof the Parties[26] hereto have signed this Agreement on this_____day of _____20**.

[Name of the State Department] (The State

Government) By:

Name:

Title:

[Name of BSWML] (BSWML) By:

Name:

Title:

[Name of the Concessionaire (The

Concessionaire) By:

Name:

Title:

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SCHEDULES

SCHEDULE 1
SCOPE OF SERVICES
(See Article 2)

1. Collection, Transportation & Processing of 1750 TPD Construction & Demolition C&D Waste

1.1 Role of Concessionaire

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1. [The Concessionaire should conduct a drone survey at its own cost. Initial and final contour level survey for determination of volume of waste has also to be done by the Concessionaire at its own cost.][27]
2. The Concessionaire shall deploy sufficient machinery, manpower and required resources to execute the Project scope within the Project duration.
3. Construction of temporary shed, platform and creation of facilities for handling, separating, segregating, storing and quantifying of the excavated MSW and Processing material
4. Construction/Provision of temporary site office, water, power, sanitation facilities to workers as per statutory standards.
5. The Concessionaire shall take necessary steps and processes to minimize environmental pollution while carrying out 1750 TPD C&D Waste/ reclamation of 1750 TPD C&D Waste at the Dumpsite(s). The Concessionaire shall take all reasonable steps to ensure to undertake required efforts to mitigate the impact of odor and dust. Also, from 1750 TPD C&D Waste prior to its disposal. The Concessionaire shall mitigate menace caused by flies, rodents and bird and fire hazards in and around the Dumpsite(s) during the period of reclamation.
6. The 1750 TPD C&D Waste activity should be carried out in accordance with *Guidelines* for Disposal of C&D Waste (Old C&D Waste), 2019 and other Applicable Laws.
7. Excavate and segregate MSW into as many kinds and categories as possible. Maximize the separation of recyclables viz. glass, metal etc. from the Dumpsite(s). Maximize the separation of waste into useful components such as compost, soil conditioner, recyclables, raw RDF, filler material (Soil, C&D) and un-useful material from the Dumpsite(s).
8. Set up an eco-friendly Processing system in order to reduce the impact of the dumping site on the adjacent areas.
9. The Concessionaire shall take all Applicable Permits and approvals in sequence and comply with the CPCB and SPCB norms therein from time to time.
10. Concessionaire shall ensure that the Dumpsite will be cleared to the ground level. For the purposes of this clause, ground level shall be determined based on the level of the Access Roads to the Dumpsite. If any waste is found below the ground level, BSWML and Concessionaire may mutually arrive at the decision to undertake of C&D Waste found below the ground level.

11. Concessionaires shall be responsible for development and maintenance of infrastructure, facilities and amenities for sieving the excavated garbage and storing the segregated materials, etc. at their own risk and cost. Provide an adequate number of Processing machines for each package for achieving its daily target of handling at least 1000 Metric Tons of C&D Waste per day.

12 Provide weighbridge to measure the quantity of waste subjected to C&D Waste at Dumpsite(s) and reject going out of the Dumpsite(s) as approved by BSWML. The Concessionaire shall ensure that the weighbridge is installed from the start date of Bio- Remediation activity. The weighing system shall be a fully online electronic, automatic system equipped with the latest technology along with backup server facility. Data of the weighing system shall be maintained properly for the entire Concession Period with backup server facility and shall be provided as & when required by BSWML/Project Engineer.

13 Deploy the necessary manpower, materials, equipment, tools to the site. The Concessionaire shall be responsible for construction of plants, sheds, support facilities for handling, separating, segregating and storing for the operation of the plant.

14 Provide security arrangements for the planned Project Site, machineries, equipment, etc., at the cost of the Concessionaire.

15 Carrying out the entire Project work in accordance with the detailed plan of action and schedule proposed by Concessionaire and approved by BSWML.

16 Ensure use of only covered body vehicles for the transportation of materials at the cost of the Concessionaire

17 The Concessionaire shall ensure that BSWML is provided with adequate information of any event or any other matter affecting the Project Facilities to enable them to control/minimize any adverse consequences.

18 The frequency and formats for the reports to be submitted shall be finalized in consultation with BSWML and form part of the Collection & Transportation Plan and Operations Protocol.

19 The following data should be included in the progress reports submitted by the Concessionaire:

a. Daily deployment of the vehicle, dumpsters and manpower.
b. Quantity of waste transported in each day.

1.2 Conditions for Weighbridge:

1. It shall be fully online electronic with real time monitoring systems, automatic system equipped with the latest technology along with backup server facility. Data of the weighing system shall be maintained properly for the entire Concession Period with backup server facility and shall be provided as & when required by BSWML/Project Engineer.

2. It shall be operated in CCTV surveillance with data storage of the entire Concession Period. For CCTV surveillance High Definition IP based cameras in adequate numbers shall be provided by the Concessionaire.

3. CCTV Recordings of operation of the weighing system shall be provided as and when required by BSWML/Project Engineer.

1.3 Conditions for Weighbridge

1. It shall be fully online electronic with real time monitoring systems, automatic system equipped with the latest technology along with backup server facility. Data of the weighing system shall be maintained properly for the entire Concession Period with backup server facility and shall be provided as & when required by BSWML/ Project Engineer.
2. It shall be operated in CCTV surveillance with data storage of the entire Concession Period. For CCTV surveillance High Definition IP based cameras in adequate numbers shall be provided by the Concessionaire.
3. CCTV Recordings of operation of the weighing system shall be provided as and when required by BSWML/ Project Engineer.

1.4 Role of BSWML

1. Provide land for SLF within [1 (one)] month to the Concessionaire from the Execution Date.

2. BSWML shall approve the Implementation Plan submitted by the Concessionaire within a period of 21 days from the date of submission. BSWML shall, where appropriate, coordinate/assist Concessionaire in securing Applicable Permits.

3. To appoint Project Engineer (Project Engineer) to monitor, supervise, and review Concessionaire's progress against the submitted timelines and also verify and

approve the Concessionaire's monthly/running bills. The Project Engineer shall also approve the weighbridge proposed by the Concessionaire.

4. BSWML shall make timely payments.

5. BSWML shall meet and defray any cost or penalty levied upon the Concessionaire pursuant to any judgment or order of any court of competent jurisdiction or statutory BSWML, in connection with any damages resulting from 1750 TPD C&D Waste, which is not directly attributable to Concessionaire's non-observance/non-performance of its Bio- Remediation or any other obligation hereunder.

6. [Assist the participating Municipalities to allocate Secondary Collection Points in consultation with the Concessionaire within 90 (ninety) days from the Execution Date.]

7. Sign, Operate and maintain an escrow account with the Concessionaire to ensure

1.5 Schedule of Penalties:

1.	Penalty for Non-reporting of vehicle after 4 hours of breakdown of vehicle before starting of work & failure of bidder to make alternate arrangements.	Rs.500/-per hour per vehicle starting after 4 hours of breakdown.
2.	Penalty for breakdown after starting the work & Failure of bidder to make alternate arrangement within 3 hours for transferring the debris from the breakdown	Rs.500/-per per hour per vehicle starting after 3 hours of breakdown.
3	Penalty for failure to attend any site and collect the complete C&D Waste thereat within 48 hours.	Rs.1000/-per spot
4	Penalty for failure to attend any site and collect the complete C&D Waste thereat within 72 Hours	Rs. 2000/- per spot per day

6	Penalty for failure to keep the vehicles well Painted.	Rs.1000/- per vehicle per trip
7.	Lump sum penalty for not starting the work after completion of mobilization period.	Rs.20,000/- per day .
8.	Penalty for failure to provide uniform	Rs.300/- per day per staff
9	Penalty for failure to provide Hand Gloves	Rs.200/- per day per staff
10	Penalty for failure to provide face mask	Rs.100/- per day per staff
11	Penalty for failure to provide safety shoes	Rs.300/- per day per staff
12	Penalty for failure to provide I-Card	Rs.100/- per day per staff
13	Penalty for failure to provide rain coat (only in Monsoon season)	Rs.200/- per day per staff
14	Penalty for failure to providing plastic/ tarpaulin cover on dumper or is torn out or	Rs.1000/- per such dumper/
15	Penalty for damaging collection spots / roads/ Municipal property by machinery (such as JCB).	Rs.500/- per spot

Penalty for Processing & Disposal of C&D Waste

S.No.	Description of Event	Penalty in INR
1.	Processing of less than 1750 TPD quantity of C&D waste (On yearly basis)	Rs. 100 per ton of unprocessed C&D waste
2.	Violation of C&D Rules and Environmental norms	Rs. 2000 per incidence in addition to action taken by concerned authorities.

3.	Non-Compliance of instructions given by competent authorities & BSWML regarding proper operation of the plant	Rs. 5000 per default per day in addition to Action taken by concerned authorities.
4.	Malpractice regarding collection, transportation, processing & disposal of C&D waste causing losses (monetary, legal, social, environmental etc)to BSWML (This shall be applicable for collection & transportation also.)	Heavy penalty of 50% of payment of last 2 months preceding the month in which malpractice is found +liquidated damages to BSWML Note – If the malpractice is done for second time, BSWML will seriously look after the same and will initiate legal action against the contractor which may include blacklisting also.
5.	Penalty for any other event of default/ lapses (eg. Non-functioning of app or website for online complaint registration) Not specifically mentioned in the tender (This shall be applicable for collection & transportation also.)	Rs. 2000 per event per day

Note:

1. If the total penalty amount reaches 10% of contract cost, BSWML may consider to terminate the contract & initiate further legal action which may include blacklisting.
2. Rate of penalty will be increased by 10% every year rounding off to the nearest rupee.

SCHEDULE 2
APPLICABLE
PERMITS
(See Article 4)

1. Concessionaire Applicable Permits

S. No.	Applicable Permit	BSWML
1.	Temporary Power Connection (During Construction Period)	Electricity Board/ other temporary sources
2.	Consent to Operate	State Pollution Control Board
3.	Consent for storage of materials	Director of Explosives
4.	Consent Firefighting system	Firefighting Department
5.	CEIG approval – stage 1 for construction & stage 2 on completion of project	Chief Electrical Inspector to Government

The Concessionaire will be liable to obtain all Applicable Permits (other than BSWML Applicable Permits) that are necessary for construction, Collection, Transportation & Processing of the Project Facilities.

BSWML shall assist the Concessionaire in obtaining all the required permits.

2. BSWML Applicable Permits[31]

S No.	Applicable Permit	BSWML
1.	Electricity Board approval during various stages – request for load sanction, remittance of deposit, installation of incomings, etc	Electricity Board
2.	Layout and building plan approval	ULB/DTCP
3.	Consent to establish	State Pollution Control Board (SPCB)

4.	Tree cutting	Forest Department
5.	Road cutting & crossing	Public Works Department
6.	Railway Crossing	Commissioner Railway safety
7.	Revenue road cutting & crossing	Panchayat/Local BSWML
8.	Access Road to new Project Facilities	Forest Department/ Panchayat/Local BSWML/Irrigation Department
9.	Consent to Operate for Existing Facilities	ULB and SPCB

The State Government and the Concessionaire shall proactively assist BSWML in obtaining all the required permits.

SCHEDULE 3

SPECIFICATIONS AND STANDARDS

(See Article 5.1)

1. Project Facilities

1.1. The Project Facilities shall conform to the Specifications and Standards as specified in this Schedule and in this Agreement.

1.2. The Specifications and Standards applicable to the design and construction of the Processing facilities, Material Recovery Facilities site and the decentralized units for Processing of Waste shall conform with the National Building Code of India, relevant specifications and standards specified by the Bureau of Indian Standards (BIS), International Organization for Standardization (ISO), other Applicable Laws and Good Industry Practice.

1.3. ln the absence of any specific provision in this Agreement, the following standards shall apply in order of priority:

(i) [National Building Code
(ii) Bureau of Indian Standards (BIS)
(iii) International guidelines
(iv) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Project Engineer.]

The latest version of the specified codes and standards which were notified published at least [60 (sixty)] days prior to the Bid Date in respect of this Agreement shall apply.

SCHEDULE 4

MAINTENANCE REQUIREMENTS

(See Article 5.1)

1. Maintenance Requirements

1.1. The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In particular, the Concessionaire shall, at all times during the Operation & Maintenance Period, conform to the Maintenance Requirements set forth in this Schedule.

1.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in Clause 2 of this Schedule within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement.

2. Repair/rectification of defects and deficiencies

2.1. The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies in the Project within the time limit set forth in Annex-I of this Schedule.

2.2. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. Other defects and deficiencies

3.1. In respect of any defect or deficiency not specified in Annex-I of this Schedule, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Project Engineer.

3.2. In respect of any defect or deficiency not specified in Annex-I of this Schedule, the Project Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Project Engineer.

4. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good industry Practice. Such additional time shall be determined by the Project Engineer and conveyed to the Concessionaire and BSWML and the State Government with reasons thereof.

5. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimising such danger.

6. Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Project and maintain a record thereof in a register. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by BSWML and the State Government and the Project Engineer at any time during office hours.

ANNEXURE-I
(Schedule

The Concessionaire shall repair and rectify the defects and deficiencies[32] specified in this Annex-I to Schedule within the time limit set forth herein:

S. No.	Nature of defect or deficiency	Time limit for repair/ rectification
Access Roads		
i.	Damage of pavement edge exceeding l0 cm	15 days
ii.	Debris on roads	2 hours
iii.	Damage to shape or position of road side furniture, signs and marking; poor visibility or loss of retro-reflectivity	24 hours
Lighting at the Project Facilities		
i.	Any major failure of the system	6 hours
ii.	Faults and minor failures	2 hours
iii.	Lighting level falling below [200] lux	1 hour

Other Maintenance Requirements

[Add any additional Maintenance Requirements for upkeep of the Project Facilities]

SCHEDULE 5
SAFETY REQUIREMENTS
(See Article 5.1)

1. Guiding principles

1.1. Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.

1.2. Safety Requirements apply to all phases of construction, development, Collection, Transportation & Processing with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

1.3. Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex-l of this Schedule.

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following:

(a) Applicable Laws and Applicable Permits;
(b) provisions of this Agreement;
(c) relevant Standards/Guidelines contained in nationally accepted codes; and
(d) Good Industry Practice.

3. Safety measures during 1750 TPD C&D waste Collection, Transportation & Processing Period

3.1. The Concessionaire shall develop, implement and administer a safety programme for the Project Facilities, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.

3.2. The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to BSWML and the State Government at the conclusion of every [month/quarter].

3.3. The Concessionaire shall submit to BSWML and the State Government before the [31st (thirty first) March] of each year, an annual report (in 3 (three) copies)

containing, without limitation, a detailed listing and analysis of all accidents of the preceding Financial Year and the measures taken by the Concessionaire pursuant to the provisions of Clause 3.1 of this Schedule for averting or minimising such accidents in future.

4. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Clause 2 of this Schedule, shall be borne by the Concessionaire in accordance with the provisions of Article 5.1.

Annex - I
(Schedule-5)
Safety
Guidelines

1. System integrity

In the design of the Project Facilities, particular care shall be taken to minimise the likely incidence of failure.

2. Safety management

A safety programme shall be prepared by the Concessionaire once every year to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project and compliance thereof. The programme shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. [2 (two)] copies of the programme shall be sent to the Project Engineer within [15 (fifteen)] days of the close of every year.

3. Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the "**Disaster Management Manual**") to be prepared and published by the Concessionaire prior to [Project COD]. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to BSWML and the State Government and the Project Engineer no later than [30 (thirty)] days prior to Project COD.

4. Fire safety

4.1. To prevent fire in the Project, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

4.2. To deal with incidents of fire, the Concessionaire shall provide a hydrant based fire-fighting system in conformity with the Good Industry Practices.

5. Surveillance and Safety Manual

The Concessionaire shall, no later than [60 (sixty)] days prior to [Project COD], evolve and adopt a manual for surveillance and safety of the Project, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environment protection.

6. Watch and Ward

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety of the Project and all persons affected by it.

SCHEDULE 6
PERFORMANCE SECURITY OR BANK GUARANTEE

[on appropriate stamp paper] (See Article 9.1)

The [Secretary], Karnataka Department of [Urban Development] and the [Municipal Commissioner of BSWML]

Address:

WHEREAS:

A. …….. (the "**Concessionaire**"), (the "**BSWML**") and the State Department of (the "**State Government**") have entered into a Concession Agreement dated (the "**Agreement**") whereby
the State Government and BSWML have agreed to the Concessionaire undertaking the development and operation of integrated C&D waste management system and Construction & Demolition C&D Waste at municipal dumpsite(s) on Collection, Transportation and Processing basis at identified locations by BSWML, in the State of Karnataka" (the **"Project"**) subject to and in accordance with the provisions of the Concession Agreement.

B. The Agreement requires the Concessionaire to furnish a Performance Security to the State Government and BSWML {of a sum of Rs. [•] (Rupees_____)} (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).

C. We, ……..through our Branch at (the "**Bank** ") have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unequivocal, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unequivocal, unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the [Construction Period], under and in accordance with the Agreement, and agrees and undertakes to

pay to the State Government and/or BSWML, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the State Government and/or BSWML shall claim, without the State Government or BSWML being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the State Government or BSWML, under the hand of an officer not below the rank of [Secretary, Department of Urban Development/Municipal Commissioner], that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the State Government and BSWML shall be the judges as to whether the Concessionaire is in default in due and faithful performance of its obligations during the [Construction] Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the State Government or BSWML and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other BSWML or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the State Government and BSWML shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the State Government or BSWML to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

5. The State Government and BSWML shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the State Government and BSWML against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the State Government and BSWML, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the State Government or BSWML of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the State Government or BSWML or of any other matter

or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the State Government and/or BSWML in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of the construction period or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the State Government or BSWML on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the State Government and BSWML under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 100% (one hundred per cent) of the Bid Project Cost which is deemed to be Rs. [•] (Rupees [•]) for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the State Government and/or BSWML shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the State Government or BSWML in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the State Government or BSWML that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force

and effect until the expiry of the construction period or until it is released earlier by the State Government and/or BSWML pursuant to the provisions of the Agreement.

Signed and sealed this …….day of …….., 20…… at ……..

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signatur)
(Name) (Designation) (Code Number)

(Address)

NOTES:

(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE 7
FORMAT OF THE MOBILIZATION ADVANCE GUARANTEE: NOT APPLICABLE

[on appropriate stamp paper] (See Article 9.10)

Guarantee No. :
[●]
Amount of Guarantee :
[●]

This Mobilization Advance Guarantee is executed on this [•] day of [•] at [•]

BY

[•] with its registered office at [•] and a branch office at [•] (hereinafter referred to as the **"Bank"**, which expression shall unless repugnant to the context thereof, be deemed to include its successors in interest and permitted assigns)

IN FAVOUR OF

(1) The State Department of [Urban Development] of Karnataka represented by [•], and having its offices at [•] (hereinafter referred to as the "**State Government**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

AND

(2) BSWML**,** a statutory body constituted under the [Act under which BSWML is established] with its registered office at [•] (hereinafter referred to as the **"BSWML"**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

WHEREAS

A. [Name of the Concessionaire] with its registered office at [insert address], hereinafter referred to as the "**Concessionaire**", which expression shall unless repugnant to the context thereof, be deemed to include its successors in interest and permitted assigns) has executed a concession agreement dated [insert date] with the State Government and BSWML ("**Concession Agreement**") in relation to design, construction, Collection, Transportation & Processing of 1750TPD C&D waste management system and C&D Waste at [Location] by the Concessionaire.

B. In terms of Artic le 9.10 of the Concession Agreement, the Concessionaire is required to furnish a Mobilization Advance Guarantee to the State Government and BSWML in the form of an unconditional, irrevocable and on demand bank guarantee for securing the Mobilization Advance made to the Concessionaire in accordance with the Concession Agreement ("**Mobilization Advance Guarantee** ") for INR [insert amount equal to 110% (one hundred and ten per cent) of the Mobilization Advance] (Rupees [•]) ("**Guaranteed Amount**").

C. At the request of the Concessionaire and for sufficient consideration, the Bank has agreed to issue this guarantee in favor of the State Government and BSWML.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used herein but not defined shall have the meaning ascribed to them in the Concession Agreement.

2. The Bank shall upon a written demand from the State Government or BSWML informing the Bank of the Concessionaire's failure to fulfill its obligations under the Concession Agreement, pay to the State Government or BSWML, within 5 (five) days of receipt of such written demand from the State Government or BSWML, without further proof or conditions and without contest, recourse, demur or protest and without any enquiry to the State Government or BSWML or the Concessionaire, forthwith and in full amount, without any deductions or set off or counter claims whatsoever, the sum claimed by the State Government or BSWML in such demand not exceeding an amount equivalent to the Guaranteed Amount. The Bank w ill pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute raised by the Concessionaire or any other person.

   The Bank agrees that this Mobilization Advance Guarantee does not limit the number of claims that may be made by the State Government or BSWML against the Bank provided that such claims taken together shall not exceed the Guaranteed Amount.

   Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, deductions or withholdings of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any Applicable Law, the Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the State Government or BSWML receives the full amount due hereunder as if no such withholding had occurred.

3. This Mobilization Advance Guarantee shall be a continuing guarantee during its currency and shall remain in force and effect until 21 (twenty one) months from the Compliance Date or until the entire Mobilization Advance has been adjusted against the Construction Payments in accordance with the Concession Agreement, whichever is later, upon which the obligations of the Bank under this Mobilization Advance Guarantee shall stand discharged

4. The obligations of the Bank herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Concession Agreement or the insolvency, bankruptcy, reorganisation, dissolution or liquidation of the Concessionaire or any change in ownership of the Concessionaire or any purported assignment by the Concessionaire or any other circumstance whatsoever

which might otherwise constitute a discharge or defence of a guarantor or a surety.

Further, this Mobilization Advance Guarantee is in no way conditional upon any requirement that the State Government or BSWML first attempts to procure the Guaranteed Amount from the Concessionaire or any other person, or resort to any other means of obtaining payment of the Guaranteed Amount.

5. The Bank hereby agrees that its liability under this Mobilization Advance Guarantee shall not be discharged by virtue of any agreement between the Concessionaire, the State Government and BSWML, whether with or without the Bank's knowledge, or by reason of the State Government or BSWML showing any indulgence or forbearance to the Concessionaire.

6. The Bank's obligations under this Mobilization Advance Guarantee for the Guaranteed Amount is primary, independent and absolute and not by way of surety only.

7. The obligations of the Ban k under this Mobilization Advance Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would prejudice or diminish the Guaranteed Amount in whole or in part, including (whether or not known to it or the State Government or BSWML):

(a) any time or waiver granted to, or composition with, the Concessionaire or any other person;

(b) any incapacity or lack of powers, BSWML or legal personality of or dissolutions or change in the status of the Concessionaire or any other person;

(c) any variation of the Concession Agreement so that references to the Concession Agreement in this Mobilization Advance Guarantee shall include each variation;

(d) any unenforceability, illegality or invalidity of any obligation of any person under the Concession Agreement or any unenforceability, illegality or invalidity of the obligations of the Bank under this Mobilization Advance Guarantee or the unenforceability, illegality or invalidity of the obligations of any person under any other document or guarantee, to the extent that each obligation under this Mobilization Advance Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity;

(e) any extension, waiver, or amendment whatsoever which may release a guarantor or the Bank (other than performance or indefeasible payment of a Guaranteed Amount); or

(f) any part performance of the Concession Agreement by the Concessionaire or by

any failure by the State Government or BSWML to timely pay or any failure by the State Government or BSWML to timely perform any of its obligations under the Concession Agreement.

8. So long as any sum remains due from the Concessionaire to the State Government or BSWML, the Bank shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against the Concessionaire (whether in respect of its liability under this Mobilization Advance Guarantee or otherwise) or claim in the insolvency or liquidation of the Concessionaire or any such other person in competition with the State Government or BSWML. If the Bank receives any payment or benefit in breach of this Clause 8, it shall hold the same in trust for the State Government and BSWML.

9. The Bank represents, warrants and undertakes to BSWML that:

(a) it has the power to execute, deliver and perform the terms and provisions of this Mobilization Advance Guarantee and has taken all necessary action(s) to authorize the execution, delivery and performance by it of this Mobilization Advance Guarantee;

(b) the Bank has duly executed and delivered this Mobilization Advance Guarantee, and this Mobilization Advance Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors" rights generally and by general equitable principles;

(c) neither the execution, delivery or performance by the Bank of this Mobilization Advance Guarantee, nor compliance by it with the terms and provisions hereof will:

(i) contravene any material provision of any law, statute, rule or regulations or any order, writ, injunction or decree of any court or governmental instrumentality; (ii) conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Bank is a party or by which it or any of its property or assets is bound; or (iii) violate any provision of the Bank's constituent documents;

(d) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date hereof), or exemption by, any governmental or public body or BSWML, or any subdivision thereof, is required to authorize, or is required in connection with: (i) the execution, delivery and performance of this Mobilization Advance Guarantee; or (ii) the legality, validity, binding effect or enforceability of this Mobilization Advance Guarantee; and

(e) this Mobilization Advance Guarantee will be enforceable when presented for

payment to a Scheduled Commercial Bank (as defined by the Reserve Bank of India Act, 1934) at [Location].

10. This Mobilization Advance Guarantee is a continuing one and all liabilities to w hich it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of the State Government or BSWML in exercising any right, power or privilege hereunder and no course of dealing between the State Government, BSWML and the Bank, or the Concessionaire, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. If any one or more of the provisions contained in this Mobilization Advance Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Bank shall enter into good faith negotiations with the State Government and BSWML to replace the invalid, illegal or unenforceable provision.

12. The Bank hereby agrees to execute and deliver all such instruments and take all such actions as may be necessary to make effective fully the purposes of this Mobilization Advance Guarantee.

13. This Mobilization Advance Guarantee may be executed in one or more duplicate counterparts, and when executed and delivered by the Bank and the State Government and BSWML shall constitute a single binding agreement.

14. Any demand, notice, request or other communication to be given or made under this Mobilization Advance Guarantee shall be deemed to have been duly given or served:

(a) Upon, the State Government, [Address of the State Government], marked for the attention of the [Officer-in-Charge];

(b) Upon, BSWML, [Address of BSWML], marked for the attention of the [Officer-in-Charge];

(c) Upon a Scheduled Commercial Bank (as defined by the Reserve Bank of India Act, 1934), at [Location], India.

15. The Bank:

(a) acknowledges that the Lenders will review this Mobilization Advance Guarantee and may require changes thereto as a condition of granting any Financial Assistance and/or providing political risk insurance; and

(b) shall consider any such requirements in good faith.

16. This Mobilization Advance Guarantee shall be governed by, and construed in accordance with, the laws of India. The Bank irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Mobilization Advance Guarantee may be brought in the courts in [State of Location].

17. The State Government and BSWML may assign or transfer all or any part of its interest herein together with the Concession Agreement to any other person with prior consent of to the Bank. The Bank may not assign or transfer any of its rights or obligations under this Mobilization Advance Guarantee.

IN WITNESS WHEREOF the Bank has set its hands hereunto on the day, month and year first hereinabove written.

Signed and delivered by [insert name of Bank] Bank by hand

SCHEDUL 8
THE SITES
(See Article 10)

Sites of the Project Facilities shall include the land, [buildings and structures].

[Note: Through suitable drawings and description in words, the land comprising the Project Sites shall each be specified briefly but precisely. In the event there are any buildings or structures on the Project Site, the same shall be marked in the drawings and briefly described in words.]

An inventory of each Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by BSWML Representative and the Concessionaire.

Additional land required for ancillary buildings, extension/ addition to the Project Facilities or for construction of works due to change of Scope of Work shall be provided by BSWML in accordance with the Article 14.6.1(r) of this Agreement. Upon provision, such land shall form part of the Site and vest in BSWML.

SCHEDULE 9
SUBSTITUTION AGREEMENT

(See Article 12.3)

THIS SUBSTITUTION AGREEMENT is entered into on this the …….. .day of ……..
20….

AMONGST

1. The **Urban Development Department (UDD), Karnataka** represented by [•], and having its offices at (*) (hereinafter referred to as the "**State Government**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

2. The BSWML, incorporated under the [Act under which BSWML has been established], represented by its Municipal Commissioner/Managing Director and having its principal offices at NO. 30/1, 1st and 2nd Floor, UNI Buildings, Thimmaiah Road, Vasanth Nagar, Bengaluru –560 002 , India (hereinafter referred to as the "**BSWML**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

3. (….LIMITED, a company incorporated under the provisions of the Companies Act,
   2013 and having its registered office at …….., (hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

4. ……..(name and particulars of Lenders" Representative) and having its registered office at ……, acting for and on behalf of the Senior Lenders.....(name) as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

(A) The State Government and BSWML has entered into a Concession Agreement dated …… with the Concessionaire (the "**Concession Agreement**") for development and operation of integrated C&D waste management system and reclamation of land through bio-

remediation of C&D Waste on hybrid annuity basis at_____, in the State of Karnataka, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C) Senior Lenders have requested the State Government and BSWML to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement. In order to enable implementation of the Project including its financing, construction, Collection, Transportation & Processing, BSWML has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW, **THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Agreement**" means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

"**Financial Default**" means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three)months;

"**Lenders' Representative**" means the person referred to as the Lenders" Representative in the foregoing Recitals;

"**Nominated Company**" means a company, incorporated under the provisions of the Companies Act, 2013, selected by the Lenders" Representative, on behalf of Senior Lenders,

and proposed to the State Government and BSWML for assignment/transfer of the Concession as provided in this Agreement;

"**Notice of Financial Default**" shall have the meaning ascribed thereto in Clause 3.2.1; and

"**Parties**" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders‟ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders‟ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders‟ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders‟ Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The State Government and BSWML hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders‟ Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders‟ Representative shall not be entitled to operate and maintain the Project at _____as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders‟ Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the State Government and BSWML for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders‟ Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders‟ Representative has issued a Notice of Financial Default, it may by notice require the State Government and BSWML to suspend all the rights of the Concessionaire and undertake the Collection, Transportation & Processing of the facility in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the State Government or BSWML shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the State Government or BSWML may terminate the Concession Agreement forthwith by issuing a Concession Period Notice in accordance with the provisions of the Concession Agreement; Provided that upon written request from the Lenders‟ Representative and the Concessionaire, the State Government or BSWML may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the State Government and BSWML expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders‟ Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the State Government or BSWML shall by a notice inform the Lenders‟ Representative of its intention to issue a Concession Period Notice and grant 15 (fifteen) days time to the Lenders‟ Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders‟ Representative makes a representation to the State Government or BSWML within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders‟ Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, the State Government or BSWML shall either withhold Concession Period or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; Provided that upon written request from the Lenders‟ Representative and the Concessionaire, the State Government or BSWML shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

3.4.1 The State Government, BSWML and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the State Government and BSWML under Clause 3.3.2, as the case may be, the Lenders‟ Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the facilities including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the State Government and BSWML under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the State Government and BSWML for short listing the bidders for award of the Concession.

3.4.3 Upon selection of a Nominated Company, the Lenders‟ Representative shall request the State

Government and BSWML to:

(a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project facilities in accordance with the provisions of the Concession Agreement;

(b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and

(c) enter into a Substitution Agreement with the Lenders‟ Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the State Government or BSWML has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders‟ Representative, give a reasoned order after hearing the Lenders‟ Representative. If no such objection is raised by the State Government or BSWML, the Nominated Company shall be deemed to have been accepted. The State Government or BSWML thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; Provided that in the event of such objection by the State Government or BSWML, the Lenders‟ Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders‟ Representative, the State Government and BSWML in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders‟ Representative or the Senior Lenders or the State Government or BSWML taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders‟ Representative are irrevocable and shall not be contested in any proceedings before any court or the State Government or BSWML and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the State Government or BSWML or the Lenders‟ Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders‟ Representative.

4. PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its consent, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

4.2 TERMINATION OF CONCESSION AGREEMENT Concession Period upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders‟ Representative may by a notice in writing require the State Government or BSWML to terminate the Concession Agreement forthwith, and upon receipt of such notice, the State Government or BSWML shall undertake Concession Period under and in accordance with the Agreement.

4.3 Concession Period when no Nominated Company is selected

In the event that no Nominated Company acceptable to the State Government and BSWML is selected and recommended by the Lenders‟ Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the State Government or BSWML may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

4.4 Realisation of Debt Due

The State Government, BSWML and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders‟ Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Concession Period of the Concession Agreement. For realisation of the Debt Due, the Lenders‟ Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

5. DURATION OF THE AGREEMENT

5.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

(a) Concession Period of the Agreement; or

(b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

6. INDEMNITY

6.1 General indemnity

6.1.1 The Concessionaire will indemnify, defend and hold the State Government, BSWML and the Lenders‟ Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

6.1.2 The State Government and BSWML will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the State Government or BSWML to fulfill any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the State Government or BSWML, its officers, servants and agents.

6.1.3 The Lenders‟ Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders‟ Representative to fulfill its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders‟ Representative, its officers, servants and agents.

6.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the

proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

7. DISPUTE RESOLUTION

7.1 Dispute resolution

7.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the State Government, BSWML, the Concessionaire and the Lenders‟ Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act,1996.

7.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [•] and the language of arbitration shall be English.

8. MISCELLANEOUS PROVISIONS

8.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at [Name of the State of the Project] shall have jurisdiction over all matters arising out of or relating to this Agreement.

8.2 Waiver of immunity

The State Government and BSWML unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or

revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of the State Government or BSWML with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

8.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

8.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

8.5 Waiver

8.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

8.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

8.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

8.7 Survival

8.7.1 Concession Period of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

8.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

8.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

8.9 Successors and assigns

This Agreement shall be binding on and shall insure to the benefit of the Parties and their respective successors and permitted assigns.

8.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

8.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

8.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

8.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the …… day of 20…… hereunto affixed in the presence of……, Director, who has signed these presents in token

thereof and ……, Company Secretary / Authorised Officer who has countersigned the same in

token thereof :

SIGNED, SEALED AND DELIVERED

For and on behalf of

NAME OF THE STATE GOVERNMENT by:

(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

NAME OF BSWML by:

(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders‟
Representative: (Signature)

(Name)
(Designatio
n) (Address)
(Fax)

(E-mail address)

In the presence of:

1. 2.

SCHEDULE 10
SCOPE OF WORK OF PROJECT ENGINEER

(See Article 13)

1. The Project Engineer shall assist the State Government and BSWML in supervising the construction, development, Collection, Transportation & Processing of the Project Facilities and shall work closely with the State Government and BSWML to monitor compliance with the KPIs. The detailed scope of work of the Project Engineer, to be read in conjunction with the provisions of the Concession Agreement, is outlined below:

1.1. The Project Engineer shall review the Designs and Drawings to be provided by the Concessionaire. These will include, inter-alia, the site layout plan, process design, drawings, structural calculations, mechanical, electrical and instrumentation works, quality plans, implementation schedules, and the environment, health & safety plans for all Project Facilities. On the basis of its review, the Project Engineer shall provide its recommendations to the State Government and BSWML.

1.2. During relevant Construction Periods, the Project Engineer shall inspect the relevant Project Facilities at least once a month and prepare an inspection report, setting out the progress of the construction of the relevant Project Facilities, defects or deficiencies, if any, and status of compliance with the Construction Plan, Technical Specifications and Designs and Drawings and the Guaranteed Interim Availability.

1.3. The Project Engineer shall be responsible to monitor the implementation of the approved environment, health & safety plan by the Concessionaire. The Project Engineer shall also verify the material safety data sheets of hazardous chemicals, if any.

1.4. The Project Engineer shall review the construction progress of the Project as per the Project Milestones proposed by the Concessionaire and provide necessary recommendations to the State Government and BSWML for the purpose of issuance of Project Milestone Certificates.

1.5. The Project Engineer shall monitor the Trial Operations of different Project Facilities during their respective Trial Periods and provide necessary recommendations to the State Government and BSWML for the purpose of the issuance of the respective COD Certificates to the Concessionaire. The review shall be based on the Trial Operations Procedures outlined in the Concession Agreement and include the following:

(a) Verify quality of installations, operation of equipment and workmanship;

(b) [Verify the Standards/quality of the By-Products;]

(c) [Verify the consumption of electricity and generation of power, if any, vis-à-vis the

Guaranteed Energy Consumption.]

1.6. The Project Engineer shall review the Collection, Transportation & Processing Manual and the Scheduled Maintenance Program submitted by the Concessionaire and provide its recommendations to the State Government and BSWML.

1.7. During the Collection, Transportation and Processing period, the Project Engineer shall inspect all the Project Facilities at least once a month and prepare an inspection report, setting out the defects or deficiencies, if any, and status of compliance with the relevant KPIs and Standards.

1.8. The Project Engineer shall review the reports generated from the Online Monitoring Systems of different Project Facilities to assess adherence to their relevant KPIs and submit the monthly KPI Adherence Reports to the State Government and BSWML.

1.9. The Project Engineer shall assist the State Government and BSWML in estimating the interim Availability Liquidated Damages and Delay Liquidated Damages, as applicable.

1.10. The Project Engineer shall assist BSWML in estimating the Liquidated Damages, as applicable.

1.11. During the Concession Period, and as requested by the State Government or BSWML, the Project Engineer shall provide its opinion and assessment on the implications of the events related to Emergency, Change in Law, Force Majeure, Fundamental Change in Law, Minor Casualty, Total Casualty, Variation and Unforeseen Site Conditions.

1.12. The Project Engineer shall participate in the survey to determine the Hand-back Conditions as per the Hand-back Requirements. It shall review the survey report of the Hand-back Conditions submitted by the Concessionaire and provide its recommendations to the State Government and BSWML on the compliance with the Hand-back Requirements.

SCHEDUL 11

DRAWINGS

(See Article 14)

Drawings

In compliance with the obligations set forth in Article 14 of this Agreement, the Concessionaire shall furnish to BSWML/Project Engineer, free of cost, all Drawings listed below:

[Note: BSWML shall list and describe in this Schedule all the Drawings that the Concessionaire is required to furnish under Article 14.]

Additional Drawings

If BSWML/Project Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed hereinabove, it may by notice require the Concessionaire to furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to BSWML/Project Engineer as if such drawings formed part of this Schedule 11.

SCHEDULE 12
CONSTRUCTION COMPLETION SCHEDULE :

(See Article 14)

1. Construction Completion Schedule

During the Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule for each of the Project milestones and Scheduled Construction Completion Date (the "**Project Completion Schedule"**). Within [15 (fifteen)] days of the date of each Project Milestone, the Concessionaire shall notify BSWML of such compliance along with necessary particulars thereof. The construction mile stones shall be defined for each processing plant separately with the staggered date of start as per the approvals of the client

2. Project Milestone-I

Project Milestone-I shall occur on the date falling on the [60th (sixtieth) day] from the Executed Date (the "**Project Milestone-I**"). Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced [soil testing, groundwater testing of Municipal Dumpsite(s)], development of Project Facilities and incurred an expenditure of not less than [5% (five per cent)] of the Bid Project Cost.

2. Project Milestone-II

Project Milestone-II shall occur on the date falling on the [120th (one hundred and twentieth) day] from the Executed Date (the **Project Milestone-II**). Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced construction of the Project Facilities and expended not less than [30% (thirty per cent)] of the Bid Project Cost set forth in the Bid Project Cost and conveyed to BSWML/Project Engineer, the nature and extent of physical progress comprising such expenditure so as to enable BSWML/Project Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred.

3. Scheduled Construction Completion Date

The Scheduled Completion Date shall occur on the [4th (fourth) anniversary of the Executed Date]. On or before the Scheduled Construction Completion Date, the Concessionaire shall have completed the Project Facilities in accordance with this Agreement.

4. Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Construction Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE 13
ENVIRONMENT, HEALTH & SAFETY

(See Article 14)

1. Link to the Environment and Social Management Framework (ESMF) to be followed for Projects

Environmental and Social Management Framework of Project:

http://--___-__-__-

2. Requirements for preparation of ESHS Management Strategies and Implementation Plans (ESHS-MSIP)

The Concessionaire shall submit comprehensive and concise Environmental, Social, Health and Safety Management Strategies and Implementation Plans (ESHS-MSIP). These strategies and plans shall describe in detail the actions, materials, equipment, management processes etc. that will be implemented by the Concessionaire, and its subcontractors.

In developing these strategies and plans, the Concessionaire shall have regard to the ESHS provisions of the Concession Agreement including those as may be more fully described in the following:

a. Works Requirements described in Concession Agreement;

b. Environmental and Social Impact Assessment (ESIA);

c. Environmental and Social Management Plan (ESMP);

d. Consent Conditions (regulatory BSWML conditions attached to any permits or approvals for the project).

……

Metrics for Progress Reports

The following Metrics should be used for regular reporting:

a. environmental incidents or non-compliances with Concession Agreement requirements, including contamination, pollution or damage to ground or water supplies;

b. health and safety incidents, accidents, injuries and all fatalities that require treatment;

c. interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);

d. status of all permits and agreements:

i. work permits: number required, number received, actions taken for those not received;

- status of permits and consents: list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);
- list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);
- identify major activities undertaken in each area this month and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);
- for quarries: status of relocation and compensation (completed, or details of monthly activities and current status).

e. health and safety supervision:

i. safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;

ii. number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);

f. worker accommodations:

iii. number of expats housed in accommodations, number of locals;

iv. date of last inspection, and highlights of inspection including status of accommodations' compliance with national and local law and good practice,

including sanitation, space, etc.;

v. actions taken to recommend/require improved conditions, or to improve conditions.

g. HIV/AIDS: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnosis (no names to be provided);

h. gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);.

i. training:

vi. number of new workers, number receiving induction training, dates of induction training;

vii. number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training; number and dates of HIV/AIDS sensitization training, no. workers receiving training (this month and in the past); same questions for gender sensitization, flaglady/flagman training.

j. environmental and social supervision:

viii. environmentalist: days worked, areas inspected and numbers of inspections of each part of the Facilities created, highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;

ix. sociologist: days worked, number of partial and full site inspections of each part of the Facilities created, highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and

x. community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.

k. Grievances: list this month's and unresolved past grievances by date received, complainant, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-

reference other sections as needed):

xi. Worker grievances;

xii. Community grievances

l. Traffic and vehicles/equipment:

xiii. traffic accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;

xiv. accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;

xv. overall condition of vehicles/equipment (subjective judgment by environmentalist); non- routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).

m. Environmental mitigations and issues (what has been done):

xvi. dust: number of working bowsers, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock/muram/spoil lorries with covers, actions taken for uncovered vehicles;

xvii. erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;

xviii. quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken this month at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;

xix. blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross- reference other sections as needed);

xx. spill cleanups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination);

xxi. waste management: types and quantities generated and managed, including amount

taken offsite (and by whom) or reused/recycled/disposed on-site;

xxii. details of tree plantings and other mitigations required undertaken this month;

xxiii. details of water and swamp protection mitigations required undertaken this month.

n. compliance:

xxiv. compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;

xxv. compliance status of ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance

xxvi. other unresolved issues from previous months related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

3. <u>Requirements for the preparation of the Code of Conduct</u>

The Concessionaire shall submit the Code of Conduct that will apply to the Concessionaire's employees and subcontractors. The Code of Conduct shall ensure compliance with the ESHS provisions of the Concession Agreement, including those as may be more fully described in the following: Works Requirements described in Concession Agreement;

a. Environmental and Social Impact Assessment (ESIA);

b. Environmental Management Plan (EMP);

c. Consent Conditions (regulatory BSWML conditions attached to any permits or approvals for the project).

<u>MINIMUM REQUIREMENTS FOR THE CODE OF CONDUCT</u>

A minimum requirement for the Code of Conduct should be set out, taking into consideration the issues, impacts, and mitigation measures identified in:

- project reports e.g. ESIA/ESMP
- consent/permit conditions

- required standards including World Bank Group EHS Guidelines and Performance Standards
- national legal and/or regulatory requirements and standards (where these represent higher standards than the WBG EHS Guidelines and PS)
- relevant standards e.g. Workers‟ Accommodation: Process and Standards (Indian Standards, and in the absence of such Indian Standards those of IFC and EBRD)
- relevant sector standards e.g. workers accommodation
- grievances redress mechanisms.

The types of issues identified could include risks associated with: labor influx, spread of communicable diseases, sexual harassment, gender based violence, illicit behavior and crime, and maintaining a safe environment etc.

A satisfactory code of conduct will contain obligations on all project staff (including sub-contractors and day workers) that are suitable to address the following issues, as a minimum.

Compliance with applicable laws, rules, and regulations of the jurisdiction

1. Compliance with applicable health and safety requirements (including wearing prescribed personal protective equipment, preventing avoidable accidents and a duty to report conditions or practices that pose a safety hazard or threaten the environment)
2. The use of illegal substances
3. Non-Discrimination (for example on the basis of family status, ethnicity, race, gender, religion, language, marital status, birth, age, disability, or political conviction)
4. Interactions with community members (for example to convey an attitude of respect and non- discrimination)
5. Sexual harassment (for example to prohibit use of language or behavior, in particular towards women or children, that is inappropriate, harassing, abusive, sexually provocative, demeaning or culturally inappropriate)
6. Violence or exploitation (for example the prohibition of the exchange of money, employment, goods, or services for sex, including sexual favors or other forms of humiliating, degrading or exploitative behavior)
7. Protection of children (including prohibitions against abuse, defilement, or otherwise unacceptable behavior with children, limiting interactions with children, and ensuring their safety in project areas)
8. Sanitation requirements (for example, to ensure workers use specified sanitary facilities provided by their employer and not open areas)

9. Avoidance of conflicts of interest (such that benefits, Concession Agreement, or employment, or any sort of preferential treatment or favors, are not provided to any person with whom there is a financial, family, or personal connection)
10. Respecting reasonable work instructions (including regarding environmental and social norms)
11. Protection and proper use of property (for example, to prohibit theft, carelessness or waste)
12. Duty to report violations of this Code
13. Non retaliation against workers who report violations of the Code, if that report is made in good faith.

The Code of Conduct should be written in plain language and signed by each worker to indicate that they have:

- received a copy of the code;
- had the code explained to them;
- acknowledged that adherence to this Code of Conduct is a condition of employment; and
- understood that violations of the Code can result in serious consequences, up to and including dismissal, or referral to legal authorities.

4. Guidelines for staffing of a Core team of 3 people for implementation of the Concessionaire's ESHS obligations

S.No	Key Position	Minimum Qualifying Requirement		
		Total Work Experience (years)	**Experience in Similar Works (years)**	**Minimum Education Qualification**
1.	Health Expert &	7	5	B.E. /B. Tech or Equivalent with Specialization / additional qualification in EHS related field.
2.	Environmental Specialist *	7	5	B.E./B. Tech or Equivalent with Specialization / additional qualification in Environment related field

S.No	Key Position	Minimum Qualifying Requirement		
		Total Work Experience (years)	**Experience in Similar Works (years)**	**Minimum Education Qualification**
3.	Social Specialist*	7	5	Master's degree in Social Work or equivalent

* He/she should have worked as a sole expert for Urban Infrastructure projects. Experience in environment / safety / Social Risk Assessment, resettlement and rehabilitation and Management plans related to similar projects would be preferred.

5. <u>Minimum Requirements and Guidelines for the preparation of the Screening Report</u> The extent of assessment required to identify and mitigate the impacts largely depends upon the complexities of project activities. The scrutiny and screening will be based on a detailed Environment

and Social Screening exercise, summarized in the following Format:

Environment and Social information format for screening			
	Project Title: Implementing agency: Project cost: Project components: Project location (Area/ district)		
	Screening Criteria	**Assessment of category (High/ low)**	**Explanatory note for categorisation**

1	Is the project in an eco-sensitive area or adjoining an eco-sensitive area? (Yes/No) If Yes, which is the area? Elaborate impact accordingly.		
2	Will the project create significant/ limited/ no social impacts? ● Involuntary land taking resulting in loss of income from agricultural land, plantation or other existing land-use. ● Involuntary land taking resulting in relocation of title holder or non-titleholder households. ● Any reduction of access to traditional and river dependent communities (to river and areas where they earn for their primary or substantial livelihood). ● Any displacement or adverse impact on tribal settlement(s). ● Any specific gender issues.		
3	Will the project create significant / limited / no environmental impacts during the construction stage? (Significant / limited / no impacts) ● Clearance of vegetation/ tree-cover		

	• Direct discharge of construction run-off, improper storage and disposal of excavation spoils, wastes and other construction materials adversely affecting water quality and flow regimes. • Flooding of adjacent areas • Improper storage and handling of substances leading to contamination of soil and water • Elevated noise and dust emission • Disruption to traffic movements • Damage to existing infrastructure, public utilities, amenities etc. • Failure to restore temporary construction sites • Possible conflicts with and/or disruption to local community • Health risks due to unhygienic conditions at workers" camps • Safety hazards during construction		
4	Will the project create significant / limited / no environmental impacts during the operational stage? (Significant / limited / no impacts) • Flooding of adjacent areas • Impacts to water quality due to effluent discharge • Gas emissions • Safety hazards		
5	Do projects of this nature / type require prior environmental clearance either from the MOEF&CC or from a relevant state Government department? (MOEF&CC/ relevant State Government department/ No clearance at all)		
6	Does the project involve any prior clearance from the MOEF&CC or State Forest department for either the conversion of forest land or for tree-cutting? (Yes/ No). If yes, which?		
7	Please attach photographs and location maps along with this completed Environmental Information Format For Screening.		
Overall assessment			

*Detailed explanation/ justification for arriving at specific category (high/ low) to be provided in the specified column

(Designation) (Designation)

(Address) (Address)

SCHEDULE 14
TESTS

(See Article 14)

1. Schedule for Tests

1.1. The Concessionaire shall, no later than [30 (thirty)] days prior to the likely completion of the Construction Period, notify BSWML/Project Engineer of its intent to subject the Project Facilities to Tests, and no later than [7 (seven)] days prior to the actual date of Tests, furnish to BSWML/Project Engineer detailed inventory and particulars of all works and equipment forming part of the Project Facilities.

1.2. The Concessionaire shall notify BSWML/Project Engineer of its readiness to subject the Project Facilities to Tests at any time after [7 (seven)] days from the date of such notice, and upon receipt of such notice, BSWML/Project Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to BSWML who may designate its representative to witness the Tests. BSWML/Project Engineer shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 14 and this Schedule.

2. Tests

2.1. In pursuance of the provisions of Article 14.12.2 of this Agreement, BSWML/Project Engineer shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.

2.2. Visual and Physical Test

BSWML/Project Engineer shall conduct a visual and physical check of the Project Facilities, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.3. Trial run

BSWML/Project Engineer shall require the Concessionaire to carry out or cause to be carried out a trial run of all equipment, facilities and systems to determine that the Project Facilities are in conformity with the provisions of this Agreement.

2.4. Tests for equipment

BSWML/Project Engineer shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Project Facilities.

1.5. Environmental audit:

BSWML/Project Engineer shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

1.6. Safety review: BSWML/Project Engineer shall carry out a safety audit of the Project to determine its compliance with the provisions of this Schedule and this Agreement.

3. Agency for Conducting Tests

All Tests set forth in this Schedule shall be conducted by BSWML/Project Engineer or such other agency or person as it may specify in consultation with BSWML.

4. Inspection by BSWML/Project Engineer

Upon successful completion of Tests, the Project Engineer shall submit an Inspection Report in accordance with the provisions of Article 14.

SCHEDULE 15
FORMAT FOR [MILESTONE] COMPLETION CERTIFICATE

(See Article 14)

To whom it may concern

In consideration of the requirements of conditions of the Agreement and the Concessionaire's application for a Completion Certificate, BSWML hereby grants the Completion Certificate.

This Completion Certificate is issued on the understanding that the conditions of the Agreement have been met except for minor outstanding work that does not affect the use and safety of the Project Facilities] and their intended use as certified by BSWML through its letter dated [•].

Completion Certificate does not relieve the Concessionaire of any requirements or obligations within the Agreement.

Signed this …….. day of …….., 20 …… at ……...

AGREED, ACCEPTED AND

SIGNED SIGNED, SEALED AND

DELIVERED

For and on behalf of	For and on behalf of
Concessionaire by:	BSWML by:
(Signature)	(Signature)
(Name)	(Name)

SCHEDULE 16
FORMAT FOR DAILY WEIGHT SHEET

(See Article 18)

Weighbridge details	
Location	
Capacity	
Date	
Time in	
Time out	
Truck no.	
Tier weight (tons)	
Full weight (tons)	
Waste quantity (Full weight – tier weight)	

SCHEDULE 17

ESCROW AGREEMENT

(See Article 19)

THIS ESCROW AGREEMENT is entered into on this the……..day of 20….

AMONGST

(3) The **Urban Development Department (UDD), Karnataka** represented by [•], and having its offices at [•] (hereinafter referred to as the "**State Government**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

AND

(4) The BSWML incorporated under the [Name of the Act under which incorporated], represented by its [Municipal Commissioner] and having its principal offices at NO. 30/1, 1st and 2nd Floor, UNI Buildings, Thimmaiah Road, Vasanth Nagar, Bengaluru –560 002 ,India (hereinafter referred to as the "**BSWML**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

AND

(5) [Name of the Concessionaire], a company organized, incorporated, registered and existing under the Companies Act, with its registered office at [•] acting through [•], [Name of the authorised signatory and his/her designation] duly authorized by resolution dated [Date of the Board Resolution] (hereinafter referred to as the "**Concessionaire"**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns)

AND

(4) [Name of Escrow Bank], a bank duly constituted in accordance with Applicable Laws and carrying on the business of banking in India as a Scheduled Commercial Bank, with its registered office at [•] and acting for the purposes of this Escrow Agreement through its branch office at [•] (hereinafter referred to as the "**Escrow Bank"**, which expression shall unless repugnant to the context or meaning thereof includes its successors and permitted assigns).

BSWML, the Concessionaire and the Escrow Bank are collectively referred to as **Parties** and individually as **Party**.

WHEREAS:

A. The State Government and BSWML, have decided to undertake the development and operation of integrated C&D Generation plant with 500 TPD SSOW processing plant and taking the O&M services from the concessionaire for period of 20 years on a PPP basis, with 100% concessionaire investment model for construction and establishment of processing plant and also to O&M of the plant for 20 years at the concessionaire investment.

B. BSWML shall supply the 500 TPD Source Segregated Organic waste (SSOW) to concessionaire on daily basis to the processing plant at the free of cost within 10% impurities of SSOW supplied to the plant

C. For this purpose, the State Government and BSWML have entered into a Concession Agreement dated with the Concessionaire (the "**Concession Agreement**") for development and operation of integrated C&D Generation plant with 500TPD SSOW processing plant on PPP model on 100% concessionaire investment basis at___, in the State of Karnataka, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

D. In consideration of the Concessionaire designing, engineering, 100% financing, procuring, constructing, installing, commissioning, operating and maintaining the Project on the Site(s) for the Concession Period of 20 years, and the concessionaire shall pay to BSWML towards the royalty @ Rs. 8.00 Lakhs per month with --- percentage of escalation per year on base year from date of the Commercial operation Date (COD) and the concessionaire further shall deposit revenue sharing of Rs. --- per TPD of inflow capacity of the SSOW supplied to the processing plant by BSWML. The concessionaire shall deposit as advance payment in escrow account for the total amounting to 12 months royalty amount plus the revenue sharing amount.

E. As per the provisions of the Concession Agreement, BSWML, the State Government, the Concessionaire are required to enter into an escrow agreement with an escrow bank and is required to open an escrow account with such escrow bank and maintain the Minimum Escrow Balance to be paid to BSWML as stipulated above.

F. The escrow account shall be funded by the concessionaire in accordance with the terms of this Escrow Agreement and such account shall serve to secure Concessionaire payment obligations towards BSWML under the Concession Agreement.

G. The Escrow Bank is willing to serve as an escrow bank in accordance with the terms and conditions of this Escrow Agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Capitalized terms used but not defined in this Escrow Agreement shall have the meaning given to them in the Concession Agreement.

1.2. In this Escrow Agreement, unless the context otherwise requires:

(a) Any reference to a statutory provision shall include such provision as modified or re- enacted or consolidated from time to time.

(b) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.

(c) Headings in this Escrow Agreement are for convenience of reference only.

(d) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.

(e) References to any date or time of day are to Indian Standard Time; any reference to day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.

(f) The references to any agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.

(g) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing. Where any notice, consent or approval is to be given by either of the Parties, the notice, consent or approval shall be given on their behalf only by any authorized persons.

(h) The words written and in writing include a facsimile transmission and any

means of reproducing works in a tangible and permanently visible form.

(i) The provisions of the clauses of this Escrow Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the clauses.

(j) In the event of any ambiguities or discrepancies between two clauses of this Escrow Agreement, the provisions of the specific clause relevant to the issue under consideration shall prevail over those in other clauses.

(k) The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Escrow Agreement.

2. ESCROW ACCOUNT

2.1. Appointment

(a) The State Government, BSWML and the Concessionaire hereby appoint the Escrow Bank to serve as the escrow bank for the purposes of this Escrow Agreement and the Escrow Bank hereby accepts this appointment.

(b) The Concessionaire hereby settle in trust with the Escrow Bank a sum of INR 1,00,000 (Rupees one one lakh). The Escrow Bank has accepted the above amount of INR 1,00,000 (Rupees one one lakh) in trust declared and, subject to the terms and conditions in this Escrow Agreement, agreed to act as trustee for the benefit of the BSWML and Concessionaire.

(c) The Escrow Bank shall hold and safeguard the Escrow Account and any monies held therein, during the term of this Escrow Agreement and shall treat the amount in the Escrow Account as monies deposited by concessionaire with the Escrow Bank in trust in accordance with the provisions of this Escrow Agreement. In performing its functions and duties under this Escrow Agreement, the Escrow Bank shall act as an agent of BSWML and the Concessionaire.

2.2. Escrow Account

(a) The concessionaire has established a bank account in the name of **[●]** (*name of account and account number*), with **[●]** (*name of the bank*), which shall be an interest bearing, no lien account, denominated in Indian Rupees for the benefit of the Concessionaire (the "**Escrow Account"**).

(b) The Escrow Bank shall provide details of the Escrow Account in writing to the Concessionaire and BSWML, including the date of opening of the Escrow

Account.

(c) The Parties agree and acknowledge that:

(i) the Escrow Account shall be opened pursuant to, and specifically for the purposes of, this Escrow Agreement and shall be used and operated only for the purposes and in the manner provided in this Escrow Agreement and for no other use or purposes and in no other manner;

(ii) the Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Escrow Agreement and its usual practices and applicable regulations;

(iii) the Escrow Bank and the Concessionaire, after consultation with the State Government and BSWML shall agree on the detailed mandates, terms and conditions and operating procedures for the Escrow Account but in the event of any inconsistency between this Escrow Agreement and such mandates, terms and conditions or procedures in this Escrow Agreement shall prevail; and

(iv) no instruction shall be given to the Escrow Bank which is not contemplated by or which is contrary to or inconsistent with this Escrow Agreement. In the event any such inconsistent or contrary instruction is given, the same shall be null and void and the Escrow Bank shall not be obliged to act upon, and shall ignore, such instructions and continue to comply with the provisions of this Escrow Agreement.

2.3. Deposits into Escrow Account

(a) Minimum Escrow Balance

At all times, to maintain the minimum balance in the Escrow Account (the **"Minimum Escrow Balance"**):

(i) The Concessionaire shall deposit in the Escrow Account an amount equivalent to the first [12 (twelve)] times the amount equals to Royalty amount plus the revenue sharing amount as agreed shall be deposited with escrow account prior to the Compliance Date. From the Compliance Date and during the Construction Period,

the concessionaire shall ensure that the Escrow Account is funded with an amount as stated above until the Project Facilities COD; and

(ii) on and from the COD and during the Construction and Processing period, the concessionaire shall deposit the Payments in the Escrow Account such that the Escrow Account is funded at all times as stated above, in accordance with Article 19.2(c) of the Agreement,

(b) The State Government and BSWML shall ensure that the minimum balance in the Escrow Account at all times during the Concession Period is not less than the Minimum Escrow Balance.

If at any time during the Construction Period or the Construction and Processing period, the balance in the Escrow Account falls below the Minimum Escrow Balance, the concessionaire shall promptly, and in any event, no later than 90 (ninety) days, fund the Escrow Account such that the Minimum Escrow Balance is maintained.

The Parties agree that a failure to maintain the Minimum Escrow Balance for 90 (ninety) days would be treated as an authority Event of Default or concessionaire of Default and in such case, the consequences set out in the Concession Agreement shall apply.

(c) It is clarified that any interest earned on the amounts deposited by BSWML in the Escrow Account will be counted towards the Minimum Escrow Balance.

2.4. Withdrawals from Escrow Account during the Construction Period

(a) Upon successful completion and verification of a monthly payment schedule as per the Concession Agreement, BSWML shall raise the Invoice on the Concessionaire within 10 (ten) days of receipt of the Invoice and issue a Payment Certificate to the Escrow Bank. The standing instructions are set forth to pay BSWML on monthly bais as per the agreed amount

(b) Immediately date of release of the payment in accordance with clause 2.4(a) above or upon receipt of instructions from the Concessionaire, the Escrow Bank shall release the amount specified in the Payment Certificate or if no Payment Certificate has been issued, then the amount specified in the relevant Invoice to the bank account of the BSWML mentioned below :
Bank:

Account number: BIC (SWIFT):

Address of Bank:

[**Insert bank account details**]

Client/ BSWML may change the above bank account details by giving a 5 (five) day prior written notice to the Escrow Bank, Concessionaire.

(c) Upon any termination of the Concession Agreement during the Construction Period of the Project Facilities, the concessionaire shall issue instructions to the Escrow Bank requesting it to release and transfer any amounts due and payable to the BSWML, including termination payments, if any, dues and any remaining amounts standing to the credit of the Escrow Account shall be transferred to the following account of Concessionaire:
Bank:

Account number: BIC (SWIFT):

Address of Bank:

[**Insert bank account details**]

The concessionaire may change the above bank account details by giving 5 (five) day prior written notice to all the Parties to this Escrow Agreement.

2.5. The State Government and BSWML shall have the right, and the Concessionaire hereby expressly grants to the State Government and BSWML the right, to recover the costs and Damages directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the State Government or BSWML. Any demand from the State Government or BSWML stating that a specified amount is payable shall be final, binding and conclusive on the Concessionaire and Escrow Bank and Escrow Bank shall pay and Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a demand for such costs and Damages.

2.6. Identification and Separation

The Escrow Bank shall clearly identify in its records the Escrow Account as an escrow account and shall keep the funds standing to the credit of the Escrow Account separated and segregated from the Escrow Bank's own funds or funds of any of its other customers or third parties.

2.7. Fees

The concessionaire shall pay [Rs. [•] per annum] as fees to the Escrow Bank for the establishment and management of the Escrow Account within 10 (ten) days of receipt of an invoice from the Escrow Bank.

2.8. Escrow Account Statements

The Escrow Bank shall provide monthly statements regarding the Escrow Account to the State Government, BSWML and the Concessionaire.

3. ESCROW AMOUNT

3.1. Promptly upon the State Government or BSWML transferring any amount to the Escrow Account, the Escrow Bank shall send a notice to the Concessionaire, the State Government and BSWML notice informing them of the transfer.

3.2. The Escrow Bank shall hold all amounts in the Escrow for the benefit of both the Concessionaire, the State Government and BSWML. Subject to clause 2.4(d) and clause 2.5(d) of this Escrow Agreement, the Escrow Bank shall not release any amount in the Escrow Account to any person other than the Concessionaire.

3.3. The Escrow Bank shall not apply any right of set-off against the amount in the Escrow Account, grant any lien over such amount, or apply any fee or deduction in relation to such amount.

4. RIGHTS, DUTIES AND OBLIGATIONS OF THE ESCROW BANK

Shall be defined in details as per the bankers requirement

5. ESCROW AGREEMENT DEFAULTS

Shall be defined subsequently

6. MISCELLANEOUS

6.1. Representations and Warranties

Each Party represents and warrants that:

(a) it has Concessionaire to enter into this Escrow Agreement;

(b) this Escrow Agreement constitutes a legally valid and binding obligation, enforceable against it in accordance with its terms;

(c) its entry into and/or performance under this Escrow Agreement will not be in breach of any express or implied terms of any contract with or other obligation to any third party; and

(d) it is solvent and able to perform all of its obligations under this Escrow Agreement.

6.2. Notices

Any notice or other communication to be given or made under this Escrow Agreement to the Parties shall be in writing. Except as otherwise provided in this Escrow Agreement, such notice, request or other communication shall be delivered by registered mail or facsimile to the Party (ies) at the following addresses:

BSWML

Attention: ---___-_____-_____-

Tel:
Fax
:

Address:

Email:

[Name of BSWML]:

Attention: ---___-_____-_____-

Tel:
Fax
:

Address:
Email:

[Concessionaire]:

Attention: ---___-_____-_____-

Tel:
Fax
:

Address:
Email:

[Escrow Bank]:

2.

SCHEDULE 18
TERMINATION COMPENSATION :
NOT APPLICABLE

(See Article 24)

~~In case of termination of the Agreement for a Concessionaire Event of Default, the Capex Annuity payable as termination compensation under Articles 24.1.2, 24.2.2 and 24.3.2 will be in accordance with the table below:~~

~~**Termination in Year post relevant COD**~~	~~**% of Capex Annuity**~~

SCHEDULE 19
CRITERIA FOR PREPARING THE LIST OF CHARTERED ACCOUNTANT FIRMS

(See Article 30.2)

The Firm of Chartered Accountants (FCA):

1. Should be in operation for the past 10 years
2. Should not have been barred or blacklisted by any entity like Central, State Government Body or Public Sector Undertaking PSU (Central/State) or any other Statutory Body.
3. Should have a branch in Karnataka
4. Should have at least 3 (three) qualified Chartered Accountants out of whom at least 1 (one) should be FCA.